

Court File No. CV-24-00000091-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

WABASEEMOONG INDEPENDENT NATIONS, on behalf of all TREATY 3

FIRST NATIONS

and

CHIEF WAYLON SCOTT, on his own behalf and on behalf of all members of the

WABASEEMOONG INDEPENDENT NATIONS and all members of Treaty 3

First Nations

Plaintiffs

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA

as represented by the ATTORNEY GENERAL OF CANADA

Defendant

(Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6)

MEMORANDUM OF FACT AND LAW OF THE PLAINTIFF

Motion for Certification

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I. OVERVIEW

1. Treaties are nation-to-nation agreements that are fundamental to Canada's history and constitutional landscape.¹ Treaties are foundational to the relationships between Indigenous peoples and the non-Indigenous peoples in Canada.² They are inviolable, engender constitutionally protected rights, and their promises must not be rendered meaningless.³ Despite the Supreme Court of Canada's emphatic pronouncements on treaty rights, the federal government ("Canada" or "the Crown") have demonstrated an obvious, and offensive lack of concern for its treaty obligations and fiduciary duties at issue in this action.
2. This proceeding arises from the Crown's historic and ongoing breaches of the Northwest Angle Treaty No. 3 ("Treaty 3"). Treaty 3 was entered into by First Nations residing in what is now northwestern Ontario and a small portion of eastern Manitoba in 1873.⁴ In exchange for ceding 55,000 square miles of their traditional lands, members of Treaty 3 First Nations were promised, among other things, an annual payment of \$5.00 under Treaty 3 ("Annuity Payment") an annual payment of \$1,500 for the purchase of ammunition and twine for hunting and fishing ("Ammunition and Twine Payment"), and certain distributions and economic support for the cultivation of agriculture ("Agricultural Benefits").⁵ In the more than 150 years since Treaty 3 was signed, Canada has shown a persistent pattern of indifference to the Crown's treaty obligations.

¹ *Shot Both Sides v. Canada*, 2024 SCC 12 [*Shot Both Sides*] at para. 12.

² *Ontario (Attorney General) v. Restoule*, 2024 SCC 27 [*RestouleSCC*] at paras. 106-107.

³ *Shot Both Sides* at paras. 41 and 46.

⁴ Expert Report of Dr. Sheldon Krasowski dated October 16, 2025 [Krasowski Report] at para. 8-9.

⁵ Affidavit of Chief Waylon Scott sworn June 25, 2025 [Chief Scott Affidavit] at para. 17, 21-22.

3. In direct violation of the Crown's promise to provide Treaty 3 First Nations with meaningful economic support under Treaty 3, the Annuity Payments and the Ammunition and Twine Payments were never indexed, augmented, or increased in the 153 years since Treaty 3 was first entered into. The Crown's inaction has decimated the Annuity Payment's and Ammunition and Twine Payment's contemporary economic value. The Supreme Court described the Crown's same conduct (being the failure to index or augment the Annuity Payment) in *Restoule* as follows: "Today, in what can only be described as a mockery of the Crown's treaty promise to the Anishinaabe of the upper Great Lakes, the annuities are distributed to individual treaty beneficiaries by giving them \$4 each."⁶
4. Wabaseemoong Independent Nations ("Wabaseemoong") brings the proposed class action on behalf of 27 Treaty 3 First Nations, who are signatories, adherents, or successors, to Treaty 3 Bands ("Treaty 3 First Nations"). Wabaseemoong alleges breach of treaty and breach of fiduciary duty against the Crown for failure to (1) index, augment, or increase the Annuity Payment to maintain the real value of the payment, (2) index, augment, or increase the Ammunition and Twine Payment to maintain the real value of the payment; and (3) fulfill the promises for Agricultural Benefits which were made under Treaty 3.
5. The three objectives of class proceedings complement the goals of reconciliation between Indigenous and non-Indigenous peoples. These synergies should and must be recognized in considering whether a class action is the preferable procedure to advance Treaty 3 First Nations' claims. Only a class action will provide for an efficient, manageable, and accessible procedure to resolve the centuries old (and continuing) breaches of treaty obligations for Treaty 3 First Nations.

⁶ [*Restoule* SCC](#) at para 2.

6. Further, the proposed class action more than satisfies all criteria for certification under section 5(1) of the *Class Proceedings Act, 1992* (the “CPA”). The Plaintiff advances viable causes of action for breach of treaty obligations and breach of fiduciary duty. The Proposed Common Issues (“PCIs”) relating to liability can be determined in common. The Crown made identical promises under Treaty 3 to each of the Treaty 3 First Nations and owes the exact same duties and obligations to each Treaty 3 First Nation, entitling the Class Members to parallel remedies.
7. A class action will achieve the goals of access to justice, behaviour modification and judicial economy. First, a class action will allow each Treaty 3 First Nation to advance their claim without commencing individual actions and retaining separate counsel. Access to justice is of paramount importance given the historic disenfranchisement and ongoing marginalization of First Nations.⁷ A class proceeding will also facilitate the expeditious resolution or the determination of Class Members’ claims. Second, a class proceeding will avoid a multiplicity of proceedings and inconsistent decisions. Third, the availability of aggravated and punitive damages in the proposed class action serves as a considerable deterrent to the Crown and the prospect of judgment will promote behaviour modification.⁸
8. Currently, there are no certified class proceedings predicated on treaty claims in Ontario, however, both the appellate courts of Manitoba and Nova Scotia have certified treaty class proceedings, with the Supreme Court of Nova Scotia (affirmed on appeal) finding

⁷ *Joyce v. Nova Scotia (Attorney General)*, 2022 NSSC 22 [*JoyceSC*] at paras. 115 and 176, citing *Nasogaluak v. Canada (Attorney General)*, 2021 FC 656 at para. 115; *Ewert v. Canada*, 2018 SCC 30 at para. 57; *Thomas and Saik’uz First Nation v. Rio Tinto Alcan Inc.*, 2022 BCSC 15 at para. 177.

⁸ *AIC Limited v. Fischer*, 2013 SCC 69 [*AIC Limited*] at para. 22; *Crisante v. DePuy Orthopaedics Inc.*, 2013 ONSC 5186 [*Crisante*]; *Daniells v. McLellan*, 2017 ONSC 3466 [*Daniells*] at para. 79.

that “...a class action is uniquely consistent with the purpose and principles of ‘reconciliation’”.⁹

9. Further, there are no viable alternatives to a class proceeding. A joinder action would render the litigation unwieldy, overly complex and unmanageable. A representation order under Rule 12.08 of the *Rules of Civil Procedure* is also untenable, as it would not provide for a streamlined discovery and common issues trial, nor important judicial oversight provided under the class proceedings regime. It is similarly not economically feasible for the 27 Treaty 3 First Nations to commence individual actions in this Court, or in the Specific Claims Tribunal to resolve their claims. Therefore, a class proceeding is the preferable and superior procedure to resolve the claims of Treaty 3 First Nations and address the Crown’s impugned conduct.

I. FACTS

A. TREATY 3

10. Treaty 3 was entered into by Indigenous leadership on behalf of Ojibwe peoples in the Northwest Angle and Lake of the Woods region in northwestern Ontario and part of Manitoba in 1873. Treaty 3 was negotiated in the context of an ongoing dispute about the Canadian government’s road and waterway developments through Manitoba and Northern Ontario. The Crown was aware of Indigenous resistance to settlement as early as 1868, and while formal attempts at Treaty negotiations took place in 1871 and 1872, both failed.¹⁰ Additional First Nations became parties to Treaty 3 through adhesions in

⁹ *JoyceSC* at para. 194.

¹⁰ Krasowski Report at para 70-74.

1874 and 1875. These additional First Nations were bound by the same promises as set out in the original 1873 text of Treaty 3.

11. The text of Treaty 3 provides that the signatory and adhering bands agreed to “cede, release, surrender and yield up... forever, all rights, titles and privileges” to approximately 55,000 square miles of land in Ontario and Manitoba to Canada and its successors.¹¹
12. In exchange for ceding their territory, Treaty 3 Nations were promised the following specific and enforceable benefits, among other things:
 - a) Reserve lands not to exceed “one square mile for each family of five, or in that proportion for larger and smaller families” and subject to approval of the location by the Treaty Commissioners;
 - b) Reserve lands for farming and for the benefit of the Indians;
 - c) Compensation for the land if reserve lands were taken for Public Works, including due compensation for any improvements made to the lands;
 - d) The right to pursue their usual vocations of hunting, fishing, and trapping on unpatented Crown lands within the area surrendered under the Treaty;
 - e) Each Indian was to receive a one-time “present” or gratuity of \$12.00 in cash;
 - f) Various agricultural implements, livestock, seed and instruction in cultivating the soil (the “Agricultural Benefits”), in particular:

“two hoes for every family actually cultivating, also one spade per family as aforesaid, one plough for every ten families as aforesaid, five harrows for every twenty families as aforesaid, one scythe for every family as aforesaid, and also one axe and one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grind-stone, one auger for each band, and also for each Chief for the use of his band one chest of ordinary carpenter's tools; also for each band enough of wheat, barley, potatoes and oats to plant

¹¹ [*Northwest Angle Treaty No. 3*](#) [Treaty 3]

the land actually broken up for cultivation by such band; also for each band one yoke of oxen, one bull and four cows”;

- g) Each Indian was to receive in cash the sum of \$5.00 per year “for ever” as per the following (the “Annuities Clause”):

“And further, that Her Majesty's Commissioners shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families, and shall in every year ensuing the date hereof, at some period in each year to be duly notified to the Indians, and at a place or places to be appointed for that purpose within the territory ceded, pay to each Indian person the sum of five dollars per head yearly”;

- h) Each Chief would receive an annual salary of \$25.00, and each subordinate officer up to three people would receive an annual salary of \$15.00;
- i) Each Chief and subordinate officer would receive a set of clothing every three years;
- j) Fifteen hundred dollars (\$1,500) per annum expended by the Crown in the purchase of ammunition and twine (the “Ammunition and Twine Clause”):

“It is further agreed between Her Majesty and the said Indians that the sum of fifteen hundred dollars per annum shall yearly and every year expended by Her Majesty in the purchase of ammunition and twine for nets for the use of the said Indians”;

- k) A flag and medals.¹²

13. At issue in this proposed action is the interpretation of the Annuities Clause and the Ammunition and Twine Clause (whether they impose an obligation on the Crown to maintain the real value of the payments), the Agricultural Benefits Clause (whether the Crown fulfilled this Treaty promise) and the remedies and compensation owed by Canada to the Class Members as a result of the Crown’s breaches of these obligations. If the Plaintiff is successful in establishing these claims, the class action provides a

¹² [Treaty 3](#)

collective remedy and compensation to all Treaty 3 First Nations, who suffered the same harm as a result of the Crown's misconduct.

B. THE ANNUITY PAYMENT HAS NEVER BEEN INCREASED

14. Since the ratification of Treaty 3, the Crown has never increased the amount of the Annuity Payment. The Crown's failure to augment the value of the annuity to offset inflation has substantially eroded the buying power of the Annuity Payment over time. Indeed, it is undisputed that the buying power of \$5.00 in 1873 has been significantly eroded over the proceeding 153 years.
15. At the time Treaty 3 was entered into, Treaty 3 First Nations understood that the Annuity Payment would provide meaningful economic support to Treaty 3 First Nations and their members. Treaty 3 included an implied promise that the Annuity Payment would retain its value over time. It is consistent with the parties' understanding that the economic benefits from the development of Treaty 3 First Nations' ceded traditional lands would be shared between the Crown and Treaty 3 First Nations. Accordingly, the Crown has an obligation to increase the Annuity Payment to offset the impacts of inflation and maintain purchasing power.

C. THE AMMUNITION AND TWINE PAYMENT HAS NEVER BEEN INCREASED

16. Since the ratification of Treaty 3, The Crown has never increased the amount of the Ammunition and Twine Payment or even properly fulfilled the distribution of this promise. Just years after the ratification of Treaty 3 the Crown was providing

inadequate ammunition and twine supplies.¹³ There was also an expectation from the Anishinaabe leadership that the value of the Ammunition and Twine Payment would increase to reflect growing needs over time.¹⁴ The Ammunition and Twine Payment was a crucial part of the Treaty relationship and reflected the partnership being entered into. As time went on there were further adhesions and *de facto* adhesions to Treaty 3 which brought substantial population increases to the Treaty 3 partnership.

17. However, the changing needs and change in value of money over time continues to go unrecognized in the Ammunition and Twine Payment's value. The Crown has an obligation to increase the Ammunition and Twine Payment to offset the impacts of inflation and other economic factors to maintain its purchasing power and true value.

D. THE AGRICULTURAL BENEFITS HAVE NEVER BEEN PROVIDED

18. Leading up to and during the Treaty 3 negotiations it was clear to the Crown representatives that provisions regarding agriculture and support for an agricultural economy were important to the Anishinaabe leadership at Treaty 3.¹⁵ The recent issues with the fulfillment of the oral promises made at Treaty 1 and 2 would have been well-known to the Treaty Commissioners at Treaty 3.¹⁶ Indeed, the provisions for Agricultural Benefits were an integral part of the Treaty relationship and was a significant livelihood guarantee for the Anishinaabe in the face of increased settlement in their area. Notably, some agricultural promises made orally are recorded in the

¹³ Krasowski Report at para 97-101.

¹⁴ Krasowski Report at para 101.

¹⁵ Krasowski Report at para 35.

¹⁶ Krasowski Report at para 28.

Anishinaabe leadership's Paypom Document but were never reflected in the final text of Treaty 3.¹⁷

19. When it came time to deliver on the Crown's promise for Agricultural Benefits including the distribution of various farming equipment, supplies, and instruction this process was significantly impacted by "a pattern of fraud, incompetence, racism, and disinterest by Indian Department officials" with the result that the Treaty 3 Agricultural Benefits promise was never fulfilled.¹⁸ This has had multi-generational consequences because of the economic disadvantages this has caused to the development of Treaty 3 First Nations' agricultural economy and livelihoods.

E. THE POWER IMBALANCE BETWEEN CROWN AND FIRST NATIONS DURING HISTORIC TREATY-MAKING

20. The Supreme Court recognizes that historic treaties were framed in a legal system unfamiliar to First Nations and negotiated and drafted in a foreign language.¹⁹ The power imbalance between the Crown and First Nations often resulted in the quick negotiation of historic treaties, with the Crown superimposing European laws and customs on pre-existing First Nations societies.²⁰
21. The Crown has a well-recognized duty to negotiate treaties in good faith, while upholding the honour of the Crown with First Nations. As the Supreme Court of Canada held in *Haida Nation v. British Columbia*, "in making and applying treaties, the Crown must

¹⁷ Krasowski Report at para 36.

¹⁸ Krasowski Report at para 43-44.

¹⁹ *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14 [*MMF*] at para. 67.

²⁰ *MMF* at para. 67.

act with honour and integrity, avoiding even the *appearance* of “sharp dealing”
(emphasis added).²¹

22. First Nations across Canada have challenged the Crown’s negotiation of historic treaties, arguing that historic treaty-making did not uphold the honour of the Crown and that the Crown has failed in its duty to diligently implement and uphold treaties.²² The Crown’s failure to negotiate in good faith at the time of treaty-making is evident of the face of the historical record. During the Treaty negotiations, the Commissioners failed to clearly distinguish between the one-time payment and the Annuity Payment. This deliberate obfuscation of the Treaty terms misled the Treaty 3 signatories who believed that the Crown had agreed to an Annuity of \$12.²³ The lack of independent financial and legal advice further disadvantaged the Treaty 3 First Nations during negotiations and exacerbated the inequality in bargaining power as between the Treaty 3 First Nations and the Crown.

F. EXPERT EVIDENCE IN SUPPORT OF CERTIFICATION

23. In support of the motion to certify the action as a class proceeding, the Plaintiff filed evidence from two experts. The first, Dr. Sheldon Krasowski, is a historian with over 28 years of academic research experience focused on the history of the Numbered Treaties and their surrounding negotiations. His work relies on both archival and oral history methodologies. The second, David Hutchings, is a leading expert in the assessment of damages resulting from breaches of the Crowns’ obligations, including

²¹ [Haida Nation v. British Columbia \(Minister of Forests\)](#), 2004 SCC 73 at para. 19 [emphasis added].

²² [RestouleSCC](#); [Chief Derek Nepinak and Chief Bonny Lynn Acoose v. Canada](#), 2025 FC 925 [[Nepinak and Acoose](#)]; [Shot Both Sides](#); [Chippewas of Nawash Unceded First Nation v. Canada \(Attorney General\)](#), 2023 ONCA 565; [JoyceCA](#); [Anderson et al v. Manitoba et al](#), 2017 MBCA 14 [[AndersonCA](#)].

²³ Krasowski Report at para 82-83.

treaty-based obligations, to First Nations. Mr. Hutchings provided expert evidence on behalf of the plaintiff First Nations in *Restoule*, the leading decision on the Crown's obligation to index annuity payments.²⁴ Canada did not cross-examine Dr. Sheldon Krasowski or Mr. Hutchings. Further, no responding reports were tendered by Canada challenging the expert opinion evidence of either witness. Accordingly, their opinions remain unchallenged.

24. Dr. Krasowski's expert report dated August 16, 2025, establishes that the Crown never indexed, augmented, or increased the Annuity Payment or Ammunition and Twine Payments for any of the Treaty 3 First Nations since the ratification of Treaty 3.²⁵ The report also provides some basis in fact that Treaty 3 First Nations expected the Annuity Payment to increase and indeed believed that the Annuity Payment was of greater value than was set out in the written document.²⁶ There is some basis in fact that the Crown failed to provide the promised Agricultural Benefits or uphold the promise to supply Ammunition and Twine.²⁷ The discrepancy between what the Crown recorded in the text of Treaty 3 and what the Anishinaabe leadership understood to be the common intention of the parties reflects the disadvantaged position of the Treaty 3 First Nations during the negotiations of Treaty 3 and afterwards.

25. Mr. Hutchings provided uncontested expert evidence on the methodologies available to calculate damages for the alleged breaches of treaty, fiduciary, and equitable duties on a class-wide basis. There are well-accepted methodologies to calculate damages arising from the Crown's failure to increase the Annuity Payment over time. Such damages

²⁴ Hutchings Report at paras. 41-43.

²⁵ Krasowski Report at para 97-101.

²⁶ Krasowski Report at para 82-83.

²⁷ Krasowski Report at para 43-44.

can be calculated by indexing the cash annuities to economic indicators and accounting for the foregone interest income on the unpaid Annuity Payment.²⁸ Likewise, methodologies exist to quantify the damages sustained by Treaty 3 First Nations as a result of the Crown's failure to fulfill the Ammunition and Twine promise and to increase its value over time. Such damages can be calculated by determining the actual amount of ammunition and twine that was reasonably expected under Treaty 3 and the economic substance of such a payment, meaning the anticipated use of this payment to fish, hunt and trap available game and fish..²⁹ Further, the failure to provide economic support for agriculture operations can be quantified by: (i) estimating the initial capital and equipment costs to start an agricultural operation in present day; and (ii) analyzing the historical incomes earned by settlers who engaged in agriculture in Treaty 3 territory to capture the historical income disparity between settlers and Treaty 3 First Nations.³⁰

G. REPRESENTATIVE PLAINTFF AND THE PUTATIVE CLASS

26. The proposed representative plaintiff, Wabaseemoong, has accessed, occupied and exercised its jurisdiction as a Nation and as stewards of the land throughout its traditional territory since time immemorial. Wabaseemoong became a beneficiary of Treaty 3 through the *de facto* adhesion to Treaty 3 and Wabaseemoong has been receiving Ammunition and Twine Payments along with its members who have been receiving Annuity Payments under Treaty 3 since that time.³¹ As with all Treaty 3 First Nations, Wabaseemoong has sustained losses on account of the Crown's failure to

²⁸ Hutchings Report at para. 17.

²⁹ Hutchings Report at para 35, 39.

³⁰ Hutching Report at para 29, 34.

³¹ Chief Scott Affidavit at para. 3-4.

maintain the real value of those payments in the years since Treaty 3 was entered into. Likewise, Wabaseemoong has never received the promised agricultural benefits which has caused economic hardship and devastation for successive generations as the Crown continues to refuse to uphold its solemn treaty obligations.

27. Wabaseemoong has advised all other Treaty 3 First Nations of this proposed class action. Wabaseemoong is a member of Grand Council Treaty #3 (“GCT3”), a political territorial organization to which 28 Treaty 3 First Nations belong. Waylon Scott, the Chief of Wabaseemoong at the time, presented the proposed class action to the GCT3 Assembly on October 3, 2024, and received a resolution in support from the GCT3 Chiefs-in-Assembly.³²

II. STATEMENT OF ISSUES

28. The sole issue on this motion is whether the Plaintiff meets the certification criteria per section 5 of the *Class Proceedings Act*, 1992, as amended (“CPA”).

III. LAW AND ARGUMENT

H. THE PLEADINGS DISCLOSE A CAUSE OF ACTION

29. Section 5(1)(a) of the CPA requires the pleadings to disclose a reasonable cause of action.³³ The threshold to strike a pleading is extremely high – the court must be satisfied that it is “plain and obvious” that the claim is “legally hopeless” and doomed

³² Chief Scott Affidavit at para 47.

³³ *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at paras. 17-22; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57, [2013] 3 SCR 477 [*Pro-Sys*] at para. 63.

to fail.³⁴ No evidence is admissible for the purpose of this analysis. The Court must read the pleadings liberally and generously, and assume that the facts pleaded are true, unless they are patently ridiculous or incapable of proof.³⁵ Further, in cases involving Indigenous issues, the Court should avoid a “technical approach” to pleadings to ensure that Indigenous rights issues (i.e. treaty rights, title claims and constitutional claims) are resolved in a manner that reflects the substance of the matter and furthers the “project of reconciliation”.³⁶

30. The Plaintiff has plead sufficient facts and cognizable breaches that are rooted in established law. The alleged breaches of treaty, fiduciary duty and the Crown’s honourable obligations caused quantifiable harm to the Class. Breach of treaty, breach of fiduciary duty and the failure to uphold the Honour of the Crown are well-established causes of action nourished by an extensive body of jurisprudence. The Claim pleads tenable causes of action in breach of treaty, breach of fiduciary duty and breach of equitable duties.

i) Breach of Treaty Obligations

31. The Supreme Court has underscored that treaties are sacrosanct and create enforceable obligations which, if breached, are actionable.³⁷ In *Restoule*, the Supreme Court recently held that the Crown’s failure to diligently implement treaty promises, including the requirement to augment annuity payments, constitutes an actionable

³⁴ [Carcillo v. Ontario Major Junior Hockey League](#), 2025 ONCA 652 [[Carcillo](#)] at para. 19; [Grant v. Canada \(Attorney General\)](#), 2009 CanLII 68179 (ONSC) [[Grant](#)] at para. 45.

³⁵ [R. v. Imperial Tobacco Canada Ltd.](#), 2011 SCC 42 at para. 17.

³⁶ [Whiteduck v. Ontario](#), 2023 ONCA 543 at para. 25, citing [Tsilhqot’in Nation v. British Columbia](#), 2014 SCC 44 at para. 23.

³⁷ [Shot Both Sides](#) at paras. 37 and 50.

breach of treaty.³⁸ In this case, Wabaseemoong pleads the Crown breached Treaty 3 obligations by failing to increase, index or augment the amount of the annual Annuity Payment, and increase, index, or augment the amount of the annual Ammunition and Twine Payment under Treaty 3. Based on the pleaded facts, it is not “plain and obvious” that the Plaintiff’s breach of treaty claim will fail. Additionally, the failure to provide Agricultural Benefits is a well-established cause of action that has given rise to settlements across the Numbered Treaties areas. To date there have been at least 40 Agricultural Benefits settlements, which as Canada has acknowledged “address failed Treaty promises by Canada to provide promised ploughs, seeds for important crops, livestock such as cows and bulls, and other farming necessities. These agricultural benefits were meant to facilitate First Nation economic development.”³⁹

ii) Breach of Fiduciary Duty

32. The Plaintiff’s breach of fiduciary duty claims satisfy section 5(1)(a) of the *CPA*. The Crown may owe fiduciary obligations to Indigenous peoples in two circumstances: (i) a *sui generis* fiduciary obligation where the Crown assumes discretionary control over a specific of cognizable Aboriginal interest; or (ii) an *ad hoc* fiduciary obligation where the Crown undertakes to exercise its discretionary control over a legal or substantial practical interest in the best interests of an Indigenous beneficiary.⁴⁰ The content and

³⁸ [Restoule SCC](#) at para. 264.

³⁹ Crown-Indigenous Relations and Northern Affairs Canada “[Canada settles Agricultural Benefits specific claims under Treaties 4 and 6](#)” (21 February 2025). See also: Crown-Indigenous Relations and Northern Affairs Canada “[Canada settles Agricultural Benefits claims with nine First Nations under Treaties 5, 6, and 10](#)” (October 18, 2024).

⁴⁰ [Williams Lake Indian Band v. Canada \(Aboriginal Affairs and Northern Development\)](#), 2018 SCC 4 at para. 44.

scope of the Crown's fiduciary duty varies with the nature and importance of the interest that is sought to be protected.⁴¹

33. The Crown's failure to act with sufficient diligence in fulfilling or implementing a treaty promise can constitute a breach of fiduciary duty.⁴²
34. The Plaintiff pleads that Canada also owed an *ad hoc* fiduciary duty to Treaty 3 First Nations, as Canada undertook to negotiate and implement Treaty 3 in the best interests of Treaty 3 First Nations. Canada breached this fiduciary duty by negotiating and implementing Treaty 3 on unconscionable, improvident and unfair terms, which caused a corresponding harm to Treaty 3 First Nations.
35. The facts pleaded alleging breach of fiduciary duties against Canada establish a tenable claim that is not doomed to fail.

I. IDENTIFIABLE CLASS

36. The proposed class definition satisfies section 5(1)(b) of the *CPA*. The class must not be overly broad, must be defined by reference to objective criteria and allow Class Members to be identified without reference to the merits of the action.⁴³ In order to satisfy section 5(1)(b), the plaintiff must establish "some basis in fact" that there are two or more persons who could prove that they suffered individual harm.⁴⁴ The proposed "First Nations Class" is defined as "any First Nation who is a successor in interest to the bands that signed or adhered to Treaty 3." The proposed Class is not

⁴¹ *MMF* at para. 49.

⁴² *Chippewas of Nawash Unceded* at para. 207.

⁴³ *Hollick v. Toronto (City)*, 2001 SCC 68 at para. 17.

⁴⁴ *Sun-Rype Products Ltd. v. Archer Daniels Midland Co.*, 2013 SCC 58 at para 72.

overly broad, is rationally connected to the proposed common issues and is also constrained by objective criteria.

J. COMMON ISSUES SATISFY THE COMMONALITY TEST

37. The Plaintiff's PCIs, as set out in Appendix "A", satisfy the commonality test under section 5(1)(c) of the *CPA*. To satisfy section 5(1)(c), the plaintiff must demonstrate "some basis in fact" that the PCIs exist and can be determined on a class wide basis.⁴⁵ As the Court of Appeal for Ontario recently observed in *Carcillo v. Ontario Major Junior Hockey League* ("*Carcillo*"), the common issues threshold is "intentionally low" and the plaintiff's evidentiary requirement to establish "some basis in fact" reflects this low bar.⁴⁶ An issue is considered common where (i) it does not inevitably break down into individual issues; and (ii) represents a substantial and necessary component of each member's claim, such that resolving it would meaningfully advance those claims.⁴⁷ The commonality analysis must be conducted purposively to determine whether allowing a class proceeding will avoid duplication of fact-finding or legal analysis.⁴⁸
38. The Plaintiff has met the commonality criterion. The PCIs in this case are a "substantial ingredient of every class member's claim" and their resolution will meaningfully advance each of the class members' claims.⁴⁹ Common issues relating to the existence of class-wide duties, the content of those duties, and breaches of those duties are

⁴⁵ *Price v. Smith & Wesson Corporation*, 2025 ONCA 452 at para. 99.

⁴⁶ *Carcillo* at paras. 40-41; *Fehr v. Sun Life Assurance Company of Canada*, 2018 ONCA 718 at para. 85.

⁴⁷ *Carcillo* at para. 39.

⁴⁸ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para. 39.

⁴⁹ *Carcillo* at para. 39; *Grossman v. Nissan Canada*, 2019 ONSC 6180 [*Grossman*] at para. 38.

routinely certified where, as here, the focus of the analysis is on the defendant's conduct.⁵⁰

39. All Class Members have the same rights under, and the same interest in the interpretation, implementation, and enforcement of Treaty 3, which contains a single set of promises that the Crown extended to each and every signatory without variation. The PCIs concern three specific breaches of treaty obligations and fiduciary duty: the failure to maintain the real value of the Annuity Payment, the failure to maintain the real value of the Ammunition and Twine Payment; and the failure to provide the Agricultural Benefits. Although the relationship between the Crown and each Treaty 3 First Nation is independent and distinct, the determination of the PCIs apply equally to all Treaty 3 First Nations.

i) PCIs 1, 2, 4, 5, 10– Duty to maintain real value of the Annuity and Ammunition and Twine Payments

40. There is “some basis in fact” that PCIs relating to whether the Crown had a duty to maintain the real value of the Annuity Payment and Ammunition and Twine Payment if this duty was breached can be answered in common for all Treaty 3 First Nations. Similarly, whether the Crown's failure to increase, index or augment the Annuity Payment and the Ammunition and Twine Payment breached the Crown's treaty obligations, fiduciary duties, honour of the Crown, or other equitable duties applies equally to all Treaty 3 First Nations. Wabaseemoong has also adduced evidence that the Crown failed to maintain the real value of the Annuity and Ammunition and Twine

⁵⁰ *Banman v. Ontario*, 2023 ONSC 6187 [*Banman*] para. 70; *Cloud v. Canada (Attorney General)*, 2004 CanLII 45444 (ONCA), paras. 32 and 71; *Cavanaugh et al. v. Grenville Christian College et al.*, 2020 ONSC 1133 at paras. 11 and 371; *Fresco v. Canadian Imperial Bank of Commerce*, 2012 ONCA 444 at para. 103.

Payments for all Treaty 3 First Nations. The resolution of PCIs 1, 2, 4, 5, and 10 will advance all Treaty 3 First Nations' claims.

ii) PCIs 7, 8, 9 – Crown's failure to provide economic assistance for agriculture

41. Similarly, there is “some basis in fact” that the Crown owed a duty to provide economic assistance for agriculture, stock-raising, and transitioning to an agricultural economy under Treaty 3, its fiduciary obligations, honour of the Crown, or equitable duties and breached that duty. PCIs 7, 8, and 9 are class-wide issues amenable to a class-wide resolution. Wabaseemoong's evidence is that the Crown failed to provide the agricultural assistance for the Treaty 3 First Nations, which has had a detrimental impact on their economy for generations.⁵¹ The determination of these PCIs applies equally to each Treaty 3 First Nations entitlements under Treaty 3, the common law, and equitable doctrines.

iii) PCIs 11 and 12 – Negotiation of Treaty 3 on improvident terms

42. The PCIs concerning the Crown's negotiation of Treaty 3 on improvident terms and whether the Crown's failure to correct this error comprises additional breaches of duty applies equally to all Treaty 3 First Nations. Under Treaty 3, all Treaty 3 First Nations are entitled to the same benefits and promises. The resolution of this PCI will apply equally to all Treaty 3 First Nations.

⁵¹ Krasowski Report at para 63.

iv) PCIs 3, 6, 9, 13, 16 –Aggregate Damages

43. The PCIs with respect to the availability of damages applies equally to all Treaty 3 First Nations. In order to certify aggregate damages, the plaintiff must establish “some basis in fact” that the methodology is sufficiently credible or plausible.⁵² This means that the methodology must offer a realistic prospect of establishing loss on a class-wide basis. Wabaseemoong has advanced workable methodologies, grounded in Mr. Hutchings’ expert evidence, to determine damages on an aggregate basis for each of the alleged breaches of treaty, fiduciary duty and equitable duties. The proposed methodologies are uncontested by Canada. They also reflect sound and well-accepted methodologies to calculate damages including aggregate damages. Further, the application of the proposed methodologies can be applied on a class-wide basis.

v) PCI 14, 15 – Unjust Enrichment

44. The Ontario Court of Appeal has certified PCIs relating to unjust enrichment.⁵³ Such common issues are amenable to class-wide resolution because the focus is on the defendant’s actions and not the actions of individual class members.⁵⁴ Here, the determination of whether the Crown was unjustly enriched through the failure to index, augment, or increase the value of the Annuity Payment and Ammunition and Twine Payment applies equally to each Class Member.

vi) PCIs 17, 18 Punitive or Exemplary Damages

⁵² [Pro-Sys Consultants Ltd. v. Microsoft Corporation](#), 2013 SCC 57 at para. 118.

⁵³ [Fulawka v. Bank of Nova Scotia](#), 2012 ONCA 443 at para. 106; [Fresco v. Canadian Imperial Bank of Commerce](#), 2012 ONCA 444 at paras. 103, 105-107.

⁵⁴ [Omarali v. Just Energy Group Inc.](#), 2016 ONSC 4904 at paras. 90-91; [Baroch v. Canada Cartage Diversified GP Inc.](#), 2015 ONSC 40 at paras. 49-50.

45. Ontario courts have routinely certified PCIs relating to punitive damages.⁵⁵ As this Court previously held “the question of whether the defendant’s conduct was sufficiently reprehensible or high-handed to warrant punishment is capable of being determined as a common issue”,⁵⁶ and “[t]he issue of exemplary or punitive damages turns on the conduct of the defendants and therefore can be appropriately determined on a class-wide basis.”⁵⁷
46. The availability of punitive damages in this case turns solely on the Crown’s conduct and here, the Plaintiffs have adduced evidence of the egregious, reprehensible and high-handed conduct of the Crown. Further, whether restitution is available under equitable doctrines is also something that can be determined in common.

K. A CLASS PROCEEDING IS PREFERABLE

vii) Applicable test to determine preferability

47. The proposed class action is the preferable procedure to resolve Class Members’ claims pursuant to section 5(1)(d) of the *CPA*. This action is governed by the amended *CPA* which includes s. 5(1.1)’s requirements that: (i) the proposed class proceeding be the superior vehicle to determine class members’ claims; and (ii) the PCIs predominate over any individual issues.⁵⁸ In *Banman*, in interpreting the amended preferability test, Perell J. held that the analysis of superiority and predominance is to be conducted through the lens of the objectives of class proceedings – access to justice, behaviour

⁵⁵ *Hodge v. Neinstein*, 2017 ONCA 494 at para. 203; *Good v. Toronto Police Services Board*, 2016 ONCA 250 at para. 82; *Grossman* at paras. 57-60; *Drynan v. Bausch Health Companies Inc.*, 2021 ONSC 7423 at paras. 365-366.

⁵⁶ *Batten v. Boehringer Ingelheim (Canada) Ltd.*, 2017 ONSC 53, para. 205.

⁵⁷ *Banerjee v. Shire Biochem Inc. et al.*, 2010 ONSC 889 at para. 34.

⁵⁸ *Banman* at paras. 317-318.

modification, and judicial economy.⁵⁹ He further held that the question of whether the common issues “predominate” requires a qualitative, not quantitative analysis.⁶⁰ In considering preferability under the amended *CPA*, the Court must consider whether:

- a) the design of the class action is manageable as a class action;
- b) there are reasonable alternatives to a class action;
- c) the common issues predominate over the individual issues; and
- d) the proposed class action is superior to the alternatives.⁶¹

48. The Supreme Court’s leading authority on the preferability analysis -*AIC Limited v. Fischer* – continues to govern the analysis of preferability under the amended *CPA*, and requires that the representative plaintiff must show “some basis in fact” that the class proceeding is (i) a fair, efficient and manageable method of advancing the claim, and (ii) preferable to any other reasonably available means of resolving the Class Members’ claims.⁶² As explained below, this proposed class proceeding will facilitate the most expeditious, fair and efficient resolution of the Treaty 3 First Nations’ claims, thereby satisfying the preferability test as articulated in *Banman*.⁶³

viii) *The design of the class proceeding is manageable*

49. As the Court of Appeal for Ontario recently underscored in *Carcillo*, “[t]he scope and complexity of a proposed proceeding are central to assessing manageability.”⁶⁴

⁵⁹ *Banman* at paras. 185(g), 313, 320.

⁶⁰ *Banman* at paras. 321-322.

⁶¹ *Banman* at para. 320; *Lockhart v. Attorney General of Canada*, 2024 ONSC 6573 at para. 262.

⁶² *AIC Limited* at para. 48.

⁶³ *Banman* at paras. 317, 320-322.

⁶⁴ *Carcillo* at para. 52.

Manageability requires consideration of factors including the size, breadth, and complexity of the case.⁶⁵

50. This proposed class action is brought by and on behalf of Treaty 3 First Nations. It concerns the interpretation, implementation and enforcement of a single treaty entered into by Treaty 3 First Nations and the Crown. It is neither “unwieldy” nor “overwhelming” in design and complexity.⁶⁶

51. The PCIs, while of significant importance to the parties, are not complex. They are issues of fact and law that can be resolved efficiently, without the need to delve into the individual circumstances of each Class Member. PCIs relating to the interpretation and enforcement of the Class Members’ collective rights, enshrined in treaty and protected by s. 35 of the *Constitution Act, 1982*, can be determined without individualized inquiries. Similarly, the PCIs relating to punitive and aggravated damages can be determined based on the conduct of Canada and its treatment of the Class Members throughout the negotiation, execution, and implementation of Treaty 3.

52. Class actions addressing treaty breaches have been found to be the preferable procedure, consistent with the goal of reconciliation, by the courts of other jurisdictions. In *Joyce v. Nova Scotia (AG)*,⁶⁷ the Nova Scotia Court of Appeal referenced the Commissioners of the Truth and Reconciliation Commission of Canada’s definition of reconciliation as “establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples”.⁶⁸

⁶⁵ [Carcillo](#) at para. 52.

⁶⁶ [Carcillo](#) at para. 52.

⁶⁷ In *Joyce v. Nova Scotia (Attorney General)*, 2024 NSCA 9 [[JoyceCA](#)], the Nova Scotia Court of Appeal affirmed the lower court’s certification of a concerned a case a class proceeding brought on behalf of the Mi’kmaw peoples of Nova Scotia, alleging breaches of their right to hunt, fish and harvest pursuant to section 35 of the *Constitution Act, 1982*.

⁶⁸ [JoyceCA](#) at paras. 71-73.

53. Similarly, in *Anderson et al v. Manitoba et. Al* (“*Anderson*”), the Manitoba Court of Appeal (“MBCA”) overturned the Manitoba Court of King’s Bench and certified a class action brought by several First Nations alleging among other things, breach of treaty rights against the Manitoba government for the flooding of their communities.⁶⁹ The Court held that the class proceeding was superior as the PCIs, which all arose from the defendants’ alleged misconduct – the Manitoba government’s operation of various dams – were a “substantial ingredient of each of the class member’s claims” and necessary to resolve each class members’ claims.⁷⁰ Here, the PCIs also flow from the Crown’s alleged misconduct in relation to the breach of its promises and duties under Treaty 3.
54. The same reasoning applies equally here. This class proceeding is a manageable means by which to resolve the common claims of all 28 Treaty 3 First Nations. The alleged breaches of treaty, fiduciary duties, and equitable duties affect all Treaty 3 First Nations equally. The availability of aggregate damages, while not required, bolsters the preferability of a class proceeding over alternatives.⁷¹ Similarly, the applicability of the same legal principles to the claims of all class members militates in favour of the manageability of a class proceeding.⁷²
55. As discussed above, the PCIs address the key issues of liability advanced by each of the Treaty 3 First Nations. The PCIs can be determined at a common issues trial with common evidence led by the Treaty 3 First Nations. Damages can also be determined on a class-wide basis and resolved at a common issues trial. Further, the Plaintiff does

⁶⁹ [AndersonCA](#). In *Anderson*, the proposed class comprised members of affected First Nations who alleged breach of treaty rights, nuisance, negligence, breach of fiduciary duty and punitive damages against the Manitoba government.

⁷⁰ [AndersonCA](#) at para 47.

⁷¹ [Carcillo](#) at para. 73; [Richard v. The Attorney General of Canada](#), 2024 ONSC 3800 [[Richard](#)] at para. 400.

⁷² [Fantl v. Transamerica Life Canada](#), 2016 ONCA 633 at paras. 40-41, 43.

not anticipate that there will be any individual issues that require resolution at an individual issues trial.

56. While there is no requirement that the Class be homogenous, the interests of Treaty 3 Nations are aligned. This class proceeding provides a fair mechanism for advancing the collective claims of the Class Members. It does so by yielding a single interpretation of treaty which will bind the Class consisting of all Treaty 3 Nations, providing certainty and finality. Finally, a class proceeding preserves the autonomy of each First Nation to remove itself from the action while eliminating economic, social and psychological barriers to participation which have prevented First Nations from accessing legal redress in the past.⁷³

ix) A class action is superior to any alternatives

57. In *Banman*, this Court found that a class proceeding was superior to alternative procedures because, among other things, it:
- a) automatically assembled all class members who may benefit from a common issue trial;
 - b) provided class members with legal representation that may otherwise be unavailable;
 - and
 - c) achieved economies of scale for the whole group.
58. These factors are also satisfied in the present case. A class proceeding is superior to any other alternatives available to Treaty 3 First Nations. Further, it is the only procedure that will promote access to justice, judicial economy, and behavioural modification.

⁷³ [*JoyceSC*](#) at para. 176.

59. First Nations are historically disenfranchised groups that have faced significant access to justice barriers.⁷⁴ A class proceeding is an accessible vehicle for Treaty 3 First Nations to collectively advance their claims.
60. The court-approved notice process will also ensure that Class Members receive adequate notice of the proceeding, have the opportunity to opt-out if they desire, and receive timely notice of developments in this litigation.
61. It also provides legal representation and recourse for Class Members who may not otherwise be able to afford counsel to pursue their individual treaty claims. A class proceeding also facilitates judicial economy by preventing the litigation of multiple overlapping claims in different forums. This will conserve judicial resources and ensure that the parties do not incur unnecessary legal expense and delay. Finally, the availability of aggregate damages achieves the goal of access to justice; as Belobaba J. observed and the Court of Appeal affirmed in *Ramdath*, without aggregate damages “the potential of the class action for enhancing access to justice will not be realized”.⁷⁵

x) No reasonable alternatives to a class proceeding

62. Breach of treaty obligations, breach of fiduciary cases, and Indigenous rights cases are amenable to certification and have been certified by Canadian Courts in the past.⁷⁶ The potential alternatives to a class proceeding are: a representative action under Rule 10 or 12.08 of the *Rules of Civil Procedure*; individual actions; a joinder action; or 28

⁷⁴ *JoyceSC* at para. 176.

⁷⁵ *Ramdath v. George Brown College*, 2014 ONSC 3066 at paras. 1, 42, var'd in part, [2015 ONCA 921](#) at paras. 75-78; *Spina v. Shoppers Drug Mart Inc.*, 2024 ONCA 642 at paras. 196-201.

⁷⁶ *AndersonCA*; *JoyceCA*.

different claims through the Specific Claims Tribunal. As explained below, none of these options are viable alternatives.

xi) Representative action under Rule 12.08 is not preferable

63. Rule 12.08 of the *Rules of Civil Procedure* authorizes unincorporated associations or trade unions to bring proceedings on behalf of groups, or collectives. Rule 12.08 is wholly distinct from Rule 114 of the *Federal Court Rules*, which is occasionally used to authorize representative actions on behalf of First Nations in the Federal Court.
64. Here, the proposed representative plaintiff and Class Members are “juridical persons” with the capacity to commence litigation in their own name. They are not Aboriginal collectives (such as unincorporated political associations) who have no legal standing to commence proceedings and must rely on a Rule 12.08 representative proceeding to enforce their rights. Accordingly, a Rule 12.08 representation order is not available in this case.

a. Individual actions or a joinder action are not reasonable alternatives

65. There is “some basis in fact” that this proceeding is superior to 28 individual actions. There is no evidence that the Plaintiff or any of Treaty 3 Nations are willing to commence individual actions, which would inevitably result in a multiplicity of proceedings (which shall be avoided pursuant to s. 138 of the *Courts of Justice Act*), and the risk of inconsistent results.
66. Similarly, a joinder of 28 First Nations would result in an unwieldy and unmanageable litigation process. It would also result in the duplication of evidence, as each Treaty 3

First Nation would be subject to discovery and required to lead evidence at trial. This is of course also burdensome to require of all First Nations.

b. The Specific Claims Tribunal is not preferable

67. There is no basis in fact that the Specific Claims Tribunal (the “Tribunal”) process is superior to a class proceeding in addressing the psychological, social, and economic barriers to access to justice faced by the Class.⁷⁷
68. The Tribunal process is lengthy and protracted and fails to protect the full scope of rights sought to be advanced through this proceeding. Claims before the Tribunal are limited to \$150,000,000 and limited to recent conduct that transpired no more than 15 years before the date on which the Claim is filed.⁷⁸ The Tribunal also lacks jurisdiction to award general and punitive damages or grant declaratory relief.⁷⁹ Accordingly, the Tribunal cannot consider all historic losses or order a remedy addressing the future or go-forward implementation of treaty promises.
69. The Tribunal process is also slow. To start a claim, a First Nation must file a claim with the Minister of Crown-Indigenous Relations (the “Minister”), who then has **three years** from this date to decide whether to negotiate the Claim, or allow the claim to proceed before the Tribunal. The First Nation cannot commence a claim before the Tribunal until the Minister authorizes it do so, or the three-year period elapses.⁸⁰

⁷⁷ [AIC Limited](#) at para. 27.

⁷⁸ [SCTA](#), s. 15(1)(a).

⁷⁹ [SCTA](#) at s. 20(1)(b).

⁸⁰ [Specific Claims Tribunal Act](#), S.C. 2008, c.22 [[SCTA](#)] at s. 16(1).

70. As this Court found in *The Chippewas of Sarnia Band*, the more comprehensive regime for the resolution of the plaintiffs' claims is the preferable option.⁸¹ As such, proceeding through the Tribunal is not preferable to a class proceeding.

xii) The common issues predominate over the individual issues

71. The current design of the class proceeding does not contemplate any individual issues. As a result, the common issues clearly predominate over any potential individual issues.⁸²

**L. WABASEEMOONG INDEPENDENT NATIONS IS A SUITABLE
REPRESENTATIVE PLAINTIFF**

72. A suitable representative plaintiff under section 5(1)(e) must: (i) adequately and fairly represent the interests of the Class; (ii) prepare a workable litigation plan; and (iii) have no conflict of interest with the Class on the PCIs.⁸³ There is ample evidence, far exceeding the "some basis in fact" standard, that Wabaseemoong meets all of these criteria.
73. Wabaseemoong has played an active role in developing the proposed class proceeding. Through the Grand Council Treaty 3, Wabaseemoong has engaged with and received support for this action from Treaty 3 First Nations. Wabaseemoong is well-situated to adequately and fairly represent the interests of the Class.⁸⁴
74. Wabaseemoong's proposed Litigation Plan sets out a comprehensive and workable framework for advancing the action and for notifying Class members and keeping them

⁸¹ *Chippewas of Sarnia Band v. Canada (Attorney General)*, 1996 CanLII 8015 (ONSC).

⁸² *Banman* at para. 322.

⁸³ *Daniells v. McLellan*, 2017 ONSC 3466 [*Daniells*] at para. 79.

⁸⁴ Chief Scott Affidavit at para 45-47, see also Exhibit "D" to Affidavit.

and their members apprised of significant developments in the litigation. For example, Class Counsel will create a system to communication updates to Treaty 3 First Nations in their language of choice and send regular litigation updates to Class Members.⁸⁵

75. Further, Wabaseemoong has no conflict of interest with any Class members with respect to the PCIs. As a party to Treaty 3, Wabaseemoong, like all other Treaty 3 First Nations, has suffered the same harm as a result of the Crown's alleged breaches of Treaty 3, breach of fiduciary duty and breach of the Honour of the Crown.

M. CONCLUSION

76. In the circumstances and in light of the reasonably available alternatives, a class proceeding best achieves the three goals of class proceedings: behaviour modification, judicial economy, access to justice.

⁸⁵ Litigation Plan dated June 25, 2025 at paras. 34-37. MRP p.159.

IV. RELIEF REQUESTED

77. Wabaseemoong respectfully requests an Order:

- a) certifying this action as a class proceeding;
- b) appointing Wabaseemoong as the representative plaintiff for the Class; and
- c) awarding Wabaseemoong costs of the certification motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of April, 2026.



Counsel for the Plaintiff

Ron S. Maurice
Ryan M. Lajke
Anjalika Rogers
Kelley V. Humber

Appendix “A” – Plaintiff’s List of Revised Proposed Common Issues (“PCIs”)

I. Treaty Annuity Payment

1. Does Treaty 3 contain an implied term requiring the Crown to increase the annual payment of \$5.00 (the “Annuity Payment”) to offset the impacts of inflation, maintain the real value thereof and/or share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3?
2. If the answer to (1) is yes, by failing to increase the Annuity Payment since Treaty 3 was entered into in 1873, did the Crown fail to act in accordance with:
 - a. its obligations to the Class under Treaty 3?;
 - b. its fiduciary obligations owing to Class Members?;
 - c. the honour of the Crown; and/or
 - d. any other equitable duties?
3. If the answer to (2)(a), (b), (c) or (d) is yes, is the Crown liable to pay damages and/or equitable compensation to the Class, and if so, in what amount?

II. Ammunition and Twine Payment

4. Does Treaty 3 contain an implied term requiring the Crown to increase the annual payment of \$1,500 (the “Ammunition and Twine Payment”) to offset inflation, maintain the real value thereof and/or share in the value of the economic benefits derived by the Crown from the territory covered by Treaty 3?
5. If the answer to (4) is yes, by failing to increase the Ammunition and Twine Payment since Treaty 3 was entered into in 1873, did the Crown fail to act in accordance with:
 - a. its obligations to the Class under Treaty 3?;
 - b. its fiduciary obligations owing to Class Members?;

- c. the honour of the Crown; and/or
 - d. any other equitable duties?
6. If the answer to (5)(a), (b), (c) or (d) is yes, is the Crown liable to pay damages and/or equitable compensation to the Class, and if so, in what amount?

III. Agricultural Benefits

7. Did Crown fail to provide the various agricultural and economic supports promised under the terms of Treaty 3 (“Agricultural Benefits”) to the Treaty 3 First Nations?
8. If the answer to (7) is yes, by failing to fulfill its promise of Agricultural Benefits since Treaty 3 was entered into in 1873, did the Crown fail to act in accordance with:
- a. its obligations to the Class under Treaty 3?;
 - b. its fiduciary obligations owing to Class Members?;
 - c. the honour of the Crown; and/or
 - d. any other equitable duties?
9. If the answer to (8)(a), (b), (c) or (d) is yes, is the Crown liable to pay damages and/or equitable compensation to the Class, and if so, in what amount?

IV. In the Alternative

Treaty Annuity Payment and Ammunition and Twine Payment

10. In the alternative, if the answer to (1) and/or (4) is no, did the Crown breach the Class Members’ rights with respect to the negotiation and implementation of Treaty 3 by failing to include an express requirement to increase the Annuity Payment and/or Ammunition and Twine Payment (an “Escalator Clause”) in the text of Treaty 3, specifically did the Crown:
- a. fail to act in good faith;

- b. breach its fiduciary obligations owing to the Class;
 - c. fail to act in accordance with the Honour of the Crown; and/or
 - d. any other equitable duties?
11. If the answer to (10) is yes, did the Governor-in-Council approve and consent to Treaty 3 on terms which were unconscionable, foolish, improvident or otherwise amounted to exploitation of the Class?
12. If the answer to (10) is yes, did the Crown commit further breaches of its equitable, fiduciary and honourable obligations owing to the Class Members by failing to correct its error at any time since the signing of Treaty 3?
13. If the answer to (10)(a), (b), (c), or (d), and/or (9), and/or (10) is yes, is the Crown liable to pay damages and/or restitution and/or equitable compensation to the Class and if so, in what amount?
14. By failing to comply with an implied or express obligation to increase the Annuity Payment and the Ammunition and Twine Payment, or alternatively, by failing to uphold its equitable, fiduciary and honourable obligations in the negotiation and implementation of Treaty 3, was the Crown unjustly enriched and did the Class suffer a corresponding deprivation without juristic reason?
15. If the answer to (14) is yes, is the Crown liable to pay damages and/or restitution to the Class and if so, in what amount?

V. Damages Assessment

16. Can damages or some portions thereof be determined on an aggregate basis?
17. Do the actions of the Crown give rise to punitive, exemplary, or aggravated damages? If so, in what amount?

18. Should the Crown pay pre-and post-judgment interest pursuant to the *Courts of Justice Act* to the class? If so, in what amount?

SCHEDULE A - LIST OF AUTHORITIES

Jurisprudence	
1.	<i>AIC Limited v. Fischer</i> , 2013 SCC 69
2.	<i>Anderson et al v. Manitoba et al</i> , 2017 MBCA 14
3.	<i>Banerjee v. Shire Biochem Inc. et al.</i> , 2010 ONSC 889
4.	<i>Banman v. Ontario</i> , 2023 ONSC 6187
5.	<i>Baroch v. Canada Cartage Diversified GP Inc.</i> , 2015 ONSC 40
6.	<i>Batten v. Boehringer Ingelheim (Canada) Ltd.</i> , 2017 ONSC 53
7.	<i>Carcillo v. Ontario Major Junior Hockey League</i> , 2025 ONCA 652
8.	<i>Cavanaugh et al. v. Grenville Christian College et al.</i> , 2020 ONSC 1133
9.	<i>Chief Derek Nepinak and Chief Bonny Lynn Acoose v. Canada</i> , 2025 FC 925
10.	<i>Chippewas of Nawash Unceded First Nation v. Canada (Attorney General)</i> , 2023 ONCA 565
11.	<i>Chippewas of Sarnia Band v. Canada (Attorney General)</i> , 1996 CanLII 8015 (ONSC).
12.	<i>Cloud v. Canada (Attorney General)</i> , 2004 CanLII 45444 (ONCA)
13.	<i>Crisante v. DePuy Orthopaedics Inc.</i> , 2013 ONSC 6351
14.	<i>Daniells v. McLellan</i> , 2017 ONSC 3466
15.	<i>Drynan v. Bausch Health Companies Inc.</i> , 2021 ONSC 7423

16.	<i>Ewert v. Canada</i> , 2018 SCC 30
17.	<i>Fantl v. Transamerica Life Canada</i> , 2016 ONCA 633
18.	<i>Fehr v. Sun Life Assurance Company of Canada</i> , 2018 ONCA 718
19.	<i>Fresco v. Canadian Imperial Bank of Commerce</i> , 2012 ONCA 444
20.	<i>Fulawka v. Bank of Nova Scotia</i> , 2012 ONCA 443
21.	<i>Good v. Toronto Police Services Board</i> , 2016 ONCA 250
22.	<i>Grant v. Canada (Attorney General)</i> , 2009 CanLII 68179 (ONSC)
23.	<i>Grossman v. Nissan Canada</i> , 2019 ONSC 6180
24.	<i>Haida Nation v. British Columbia (Minister of Forests)</i> , 2004 SCC 73
25.	<i>Hodge v. Neinstein</i> , 2017 ONCA 494
26.	<i>Hollick v. Toronto (City)</i> , 2001 SCC 68
27.	<i>Joyce v. Nova Scotia (Attorney General)</i> , 2022 NSSC 22
28.	<i>Joyce v. Nova Scotia (Attorney General)</i> , 2024 NSCA 9
29.	<i>Lockhart v. Attorney General of Canada</i> , 2024 ONSC 6573
30.	<i>Manitoba Metis Federation Inc. v. Canada (Attorney General)</i> , 2013 SCC 14
31.	<i>Nasogaluak v. Canada (Attorney General)</i> , 2021 FC 656
32.	<i>Omarali v Just Energy</i> , 2016 ONSC 4094

33.	<i>Ontario (Attorney General) v. Restoule</i> , 2024 SCC 27
34.	<i>Price v. Smith & Wesson Corporation</i> , 2025 ONCA 452
35.	<i>Pro-Sys Consultants Ltd. v. Microsoft Corporation</i> , 2013 SCC 57
36.	<i>R. v. Imperial Tobacco Canada Ltd.</i> , 2011 SCC 42
37.	<i>Ramdath v. George Brown College</i> , 2014 ONSC 3066
38.	<i>Ramdath v. George Brown College</i> , 2015 ONCA 921
39.	<i>Richard v. The Attorney General of Canada</i> , 2024 ONSC 3800
40.	<i>Shot Both Sides v. Canada</i> , 2024 SCC 12
41.	<i>Spina v. Shoppers Drug Mart Inc.</i> , 2024 ONCA 642
42.	<i>Sun-Rype Products Ltd. v. Archer Daniels Midland Co.</i> , 2013 SCC 58
43.	<i>Thomas and Saik'uz First Nation v. Rio Tinto Alcan Inc.</i> , 2022 BCSC 15
44.	<i>Tsilhqot'in Nation v. British Columbia</i> , 2014 SCC 44
45.	<i>Western Canadian Shopping Centres Inc. v. Dutton</i> , 2001 SCC 46
46.	<i>Whiteduck v. Ontario</i> , 2023 ONCA 543
47.	<i>Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)</i> , 2018 SCC 4

SCHEDULE B – LIST OF STATUTES

Canadian Charter of Rights and Freedoms, Rights of the Aboriginal Peoples of Canada, Part 2 of [The Constitution Act, 1982](#)

Recognition of existing aboriginal and treaty rights

35 (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of *aboriginal peoples of Canada*

(2) In this Act, *aboriginal peoples of Canada* includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements

(3) For greater certainty, in subsection (1) *treaty rights* includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Class Proceedings Act, 1992, S.O. 1992, c. 6

Certification

5. (1) The court shall, subject to subsection (6) and to section 5.1, certify a class proceeding on a motion under section 2, 3 or 4 if,

- (a) the pleadings or the notice of application discloses a cause of action;
- (b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;
- (c) the claims or defences of the class members raise common issues;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) there is a representative plaintiff or defendant who,
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members. 1992, c. 6, s. 5 (1); 2020, c. 11, Sched. 4, s. 7 (1).

Same

(1.1) In the case of a motion under section 2, a class proceeding is the preferable procedure for the resolution of common issues under clause (1) (d) only if, at a minimum,

(a) it is superior to all reasonably available means of determining the entitlement of the class members to relief or addressing the impugned conduct of the defendant, including, as applicable, a quasi-judicial or administrative proceeding, the case management of individual claims in a civil proceeding, or any remedial scheme or program outside of a proceeding; and

(b) the questions of fact or law common to the class members predominate over any questions affecting only individual class members. 2020, c. 11, Sched. 4, s. 7 (2).

Idem, subclass protection

(2) Despite subsection (1), where a class includes a subclass whose members have claims or defences that raise common issues not shared by all the class members, so that, in the opinion of the court, the protection of the interests of the subclass members requires that they be separately represented, the court shall not certify the class proceeding unless there is a representative plaintiff or defendant who,

(a) would fairly and adequately represent the interests of the subclass;

(b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the subclass and of notifying subclass members of the proceeding; and

(c) does not have, on the common issues for the subclass, an interest in conflict with the interests of other subclass members. 1992, c. 6, s. 5 (2); 2020, c. 11, Sched. 4, s. 7

Evidence as to size of class

(3) Each party to a motion for certification shall, in an affidavit filed for use on the motion, provide the party's best information on the number of members in the class. 1992, c. 6, s. 5 (3).

Adjournments

(4) The court may adjourn the motion for certification to permit the parties to amend their materials or pleadings or to permit further evidence. 1992, c. 6, s. 5 (4).

Certification not a ruling on merits

(5) An order certifying a class proceeding is not a determination of the merits of the proceeding. 1992, c. 6, s. 5 (5); 2020, c. 11, Sched. 4, s. 7 (4).

Existence of other class proceeding

(6) If a class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, has been commenced in a Canadian jurisdiction other than Ontario involving the same or similar subject matter and some or all of the same class members as in a proceeding under this Act, the court shall determine whether it would be preferable for some or all of the claims of some or all of the class members, or some or all of the common issues raised by those claims, to be resolved in the proceeding commenced in the other jurisdiction instead of in the proceeding under this Act. 2020, c. 11, Sched. 4, s. 7 (2).

Same, considerations

(7) In making a determination under subsection (6), the court shall,

(a) be guided by the following objectives:

(i) ensuring that the interests of all parties in each of the applicable jurisdictions are given due consideration,

(ii) ensuring that the ends of justice are served,

(iii) avoiding irreconcilable judgments where possible,

- (iv) promoting judicial economy; and
- (b) consider all relevant factors, including,
 - (i) the alleged basis of liability in each of the proceedings, and any differences in the laws of each applicable jurisdiction respecting such liability and any available relief,
 - (ii) the stage each proceeding has reached,
 - (iii) the plan required to be produced for the purposes of each proceeding, including the viability of the plan and the available capacity and resources for advancing the proceeding on behalf of the class,
 - (iv) the location of class members and representative plaintiffs in each proceeding, including the ability of a representative plaintiff to participate in a proceeding and to represent the interests of class members,
 - (v) the location of evidence and witnesses, and
 - (vi) the ease of enforceability in each applicable jurisdiction. 2020, c. 11, Sched. 4, s. 7 (2).

Motion for determination under subs. (6)

- (8) The court, on the motion of a party or class member made before the hearing of the motion for certification, may make a determination under subsection (6) with respect to a proceeding under this Act, and, in doing so, may make any orders it considers appropriate respecting the proceeding, including,
- (a) staying the proceeding; and
 - (b) imposing such terms on the parties as the court considers appropriate. 2020, c. 11, Sched. 4, s. 7 (2).

Courts of Justice Act, R.S.O. 1990, c. C.43

Prejudgment and postjudgment interest rates

Definitions

127 (1) In this section and in [sections 128](#) and [129](#),

“bank rate” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short-term advances to banks listed in Schedule I to the [Bank Act](#) (Canada); (“taux d’escompte”)

“date of the order” means the date the order is made, even if the order is not entered or enforceable on that date, or the order is varied on appeal, and in the case of an order directing a reference, the date the report on the reference is confirmed; (“date de l’ordonnance”)

“postjudgment interest rate” means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the date of the order falls, rounded to the next higher whole number where the bank rate includes a fraction, plus 1 per cent; (“taux d’intérêt postérieur au jugement”)

“prejudgment interest rate” means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced, rounded to the nearest tenth of a percentage point; (“taux d’intérêt antérieur au jugement”)

“quarter” means the three-month period ending with the 31st day of March, 30th day of June, 30th day of September or 31st day of December. (“trimestre”) R.S.O. 1990, c. C.43, s. 127 (1).

Calculation and publication of interest rates

(2) After the first day of the last month of each quarter, a person designated by the Deputy Attorney General shall forthwith,

(a) determine the prejudgment and postjudgment interest rate for the next quarter; and

(b) publish in the prescribed manner a table showing the rate determined under clause (a) for the next quarter and the rates determined under clause (a) or under a predecessor of that clause for all the previous quarters during the preceding 10 years. [2006, c. 21](#), Sched. A, s. 18.

Regulations

(3) The Attorney General may, by regulation, prescribe the manner in which the table described in clause (2) (b) is to be published. [2006, c. 21](#), Sched. A, s. 18.

Prejudgment interest

128 (1) A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate, calculated from the date the cause of action arose to the date of the order. R.S.O. 1990, c. C.43, s. 128 (1).

Exception for non-pecuniary loss on personal injury

(2) Despite subsection (1), the rate of interest on damages for non-pecuniary loss in an action for personal injury shall be the rate determined by the rules of court made under [clause 66 \(2\)](#) (w). R.S.O. 1990, c. C.43, s. 128 (2); 1994, c. 12, s. 44.

Special damages

(3) If the order includes an amount for past pecuniary loss, the interest calculated under subsection (1) shall be calculated on the total past pecuniary loss at the end of each six-month period and at the date of the order.

Exclusion

(4) Interest shall not be awarded under subsection (1),

- (a) on exemplary or punitive damages;
- (b) on interest accruing under this section;
- (c) on an award of costs in the proceeding;
- (d) on that part of the order that represents pecuniary loss arising after the date of the order and that is identified by a finding of the court;
- (e) with respect to the amount of any advance payment that has been made towards settlement of the claim, for the period after the advance payment has been made;
- (f) where the order is made on consent, except by consent of the debtor; or
- (g) where interest is payable by a right other than under this section. R.S.O. 1990, c. C.43, s. 128 (3, 4).

Postjudgment interest

129 (1) Money owing under an order, including costs to be assessed or costs fixed by the court, bears interest at the postjudgment interest rate, calculated from the date of the order.

Multiplicity of proceedings

138 As far as possible, multiplicity of legal proceedings shall be avoided. R.S.O. 1990, c. C.43, s. 138.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Interpretation

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. R.R.O. 1990, Reg. 194, r. 1.04 (1).

Representation of an Interested Person Who Cannot Be Ascertained

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

(a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

(b) the determination of a question arising in the administration of an estate or trust;

(c) the approval of a sale, purchase, settlement or other transaction;

(d) the approval of an arrangement under the *Variation of Trusts Act*;

(e) the administration of the estate of a deceased person; or

(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

Order Binds Represented Persons

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03. R.R.O. 1990, Reg. 194, r. 10.01 (2).

Settlement Affecting Persons who are not Parties

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

(a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or

(b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons. R.R.O. 1990, Reg. 194, r. 10.01 (3).

(4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to rule 10.03. R.R.O. 1990, Reg. 194, r. 10.01 (4).

Representation of a Deceased Person

10.02 Where it appears to a judge that the estate of a deceased person has an interest in a matter in question in the proceeding and there is no executor or administrator of the estate, the judge may order that the proceeding continue in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent the estate for the purposes of the proceeding, and an order in the proceeding binds the estate of the deceased person, subject to rule 10.03, as if the executor or administrator of the estate of that person had been a party to the proceeding. R.R.O. 1990, Reg. 194, r. 10.02.

Relief from Binding Effect of Order

10.03 Where a person or an estate is bound by reason of a representation order made under subrule 10.01 (1) or rule 10.02, an approval under subrule 10.01 (3) or an order that the proceeding continue made under rule 10.02, a judge may order in the same or a subsequent proceeding that the person or estate not be bound where the judge is satisfied that,

(a) the order or approval was obtained by fraud or non-disclosure of material facts;

(b) the interests of the person or estate were different from those represented at the hearing; or

(c) for some other sufficient reason the order or approval should be set aside. R.R.O. 1990, Reg. 194, r. 10.03; O. Reg. 259/14, s. 3.

Proceeding by Unincorporated Association or Trade Union

12.08 Where numerous persons are members of an unincorporated association or trade union and a proceeding under the Act would be an unduly expensive or inconvenient means for determining their claims, one or more of them may be authorized by the court to bring a proceeding on behalf of or for the benefit of all. O. Reg. 288/99, s. 9; O. Reg. 496/20, s. 5.

RULE 37 MOTIONS — JURISDICTION AND PROCEDURE

Notice of Motion

37.01 A motion shall be made by a notice of motion (Form 37A) unless the nature of the motion or the circumstances make a notice of motion unnecessary or these rules provide otherwise. R.R.O. 1990, Reg. 194, r. 37.01; O. Reg. 322/24, s. 4.

Jurisdiction to Hear a Motion

Jurisdiction of Judge

37.02 (1) A judge has jurisdiction to hear any motion in a proceeding. R.R.O. 1990, Reg. 194, r. 37.02 (1).

Jurisdiction of an Associate Judge

(2) An associate judge has jurisdiction to hear any motion in a proceeding, and has all the jurisdiction of a judge in respect of a motion, except a motion,

(a) where the power to grant the relief sought is conferred expressly on a judge by a statute or rule;

(b) to set aside, vary or amend an order of a judge;

(c) to abridge or extend a time prescribed by an order that an associate judge could not have made;

(d) for judgment on consent in favour of or against a party under disability;

(e) relating to the liberty of the subject;

(f) under section 4 or 5 of the *Judicial Review Procedure Act*; or

(g) in an appeal. R.R.O. 1990, Reg. 194, r. 37.02 (2); O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Jurisdiction of Registrar

(3) The registrar shall make an order granting the relief sought on a motion for an order on consent, if,

(a) the consent of all parties (including the consent of any party to be added, deleted or substituted) is filed;

(b) the consent states that no party affected by the order is under disability; and

(c) the order sought is for,

(i) amendment of a pleading, notice of application or notice of motion,

(ii) addition, deletion or substitution of a party,

(iii) removal of a lawyer as lawyer of record;

(iv) setting aside the noting of a party in default,

(v) setting aside a default judgment,

(vi) discharge of a certificate of pending litigation,

(vii) security for costs in a specified amount,

(viii) re-attendance of a witness to answer questions on an examination,

(ix) fulfilment of undertakings given on an examination, or

(x) dismissal of a proceeding, with or without costs. O. Reg. 19/03, s. 8; O. Reg. 575/07, s. 21.

Where Motions to be Brought

37.03 Unless the court orders otherwise, all motions shall be brought in the county where the proceeding was commenced or to which it has been transferred under rule 13.1.02 and, if a motion is to be heard in person, it shall be heard in that county. O. Reg. 689/20, s. 22.

Motions — To Whom to be Made

37.04 A motion shall be made to the court if it is within the jurisdiction of an associate judge or registrar and otherwise shall be made to a judge. R.R.O. 1990, Reg. 194, r. 37.04; O. Reg. 19/03, s. 9; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Hearing Date for Motions

Where no practice direction

37.05 (1) At any place where no practice direction concerning the scheduling of motions is in effect, a motion may be set down for hearing on any day on which a judge or associate judge is scheduled to hear motions. O. Reg. 770/92, s. 10; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Exception, lengthy hearing

(2) If a lawyer estimates that the hearing of the motion will be more than two hours long, a hearing date shall be obtained from the registrar before the notice of motion is served. O. Reg. 770/92, s. 10; O. Reg. 575/07, s. 3.

Urgent motion

(3) An urgent motion may be set down for hearing on any day on which a judge or associate judge is scheduled to hear motions, even if a lawyer estimates that the hearing is likely to be more than two hours long. O. Reg. 770/92, s. 10; O. Reg. 575/07, s. 3; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Content of Notice

37.06 Every notice of motion (Form 37A) shall,

- (a) state the precise relief sought;
- (b) state the grounds to be argued, including a reference to any statutory provision or rule to be relied on; and
- (c) list the documentary evidence to be used at the hearing of the motion. R.R.O. 1990, Reg. 194, r. 37.06.

Service of Notice

Required as General Rule

37.07 (1) The notice of motion shall be served on any party or other person who will be affected by the order sought, unless these rules provide otherwise. R.R.O. 1990, Reg. 194, r. 37.07 (1); O. Reg. 260/05, s. 9 (1).

Where Not Required

(2) Where the nature of the motion or the circumstances render service of the notice of motion impracticable or unnecessary, the court may make an order without notice. R.R.O. 1990, Reg. 194, r. 37.07 (2).

(3) Where the delay necessary to effect service might entail serious consequences, the court may make an interim order without notice. R.R.O. 1990, Reg. 194, r. 37.07 (3).

(4) Unless the court orders or these rules provide otherwise, an order made without notice to a party or other person affected by the order shall be served on the party or other person, together with a copy of the notice of motion and all affidavits and other documents used at the hearing of the motion. O. Reg. 219/91, s. 3; O. Reg. 260/05, s. 9 (2).

Where Notice Ought to Have Been Served

(5) Where it appears to the court that the notice of motion ought to have been served on a person who has not been served, the court may,

(a) dismiss the motion or dismiss it only against the person who was not served;

(b) adjourn the motion and direct that the notice of motion be served on the person; or

(c) direct that any order made on the motion be served on the person. R.R.O. 1990, Reg. 194, r. 37.07 (5).

Minimum Notice Period

(6) Where a motion is made on notice, the notice of motion shall be served at least seven days before the date on which the motion is to be heard. R.R.O. 1990, Reg. 194, r. 37.07 (6); O. Reg. 171/98, s. 12; O. Reg. 438/08, s. 33.

Filing of Notice of Motion

37.08 (1) Where a motion is made on notice, the notice of motion shall be filed with proof of service at least seven days before the hearing date in the court office where the motion is to be heard. R.R.O. 1990, Reg. 194, r. 37.08 (1); O. Reg. 171/98, s. 13; O. Reg. 438/08, s. 34.

(2) Where service of the notice of motion is not required, it shall be filed at or before the hearing. R.R.O. 1990, Reg. 194, r. 37.08 (2).

Abandoned Motions

37.09 (1) A party who makes a motion may abandon it by delivering a notice of abandonment. R.R.O. 1990, Reg. 194, r. 37.09 (1).

(2) A party who serves a notice of motion and does not file it or appear at the hearing shall be deemed to have abandoned the motion unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 37.09 (2).

(3) Where a motion is abandoned or is deemed to have been abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 37.09 (3).

Material for Use on Motions

Where Motion Record Required

37.10 (1) Where a motion is made on notice, the moving party shall, unless the court orders otherwise before or at the hearing of the motion, serve a motion record on every other party to the motion and file it, with proof of service, in the court office where the motion is to be heard, at least seven days before the hearing, and the court file shall not be placed before the judge or associate judge hearing the motion unless he or she requests it or a party requisitions it. R.R.O. 1990, Reg. 194, r. 37.10 (1); O. Reg. 171/98, s. 14 (1); O. Reg. 438/08, s. 35 (1); O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Contents of Motion Record

(2) The motion record shall contain, in consecutively numbered pages arranged in the following order,

(a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;

(b) a copy of the notice of motion;

(c) a copy of all affidavits and other material served by any party for use on the motion;

(d) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and

(e) a copy of any other material in the court file that is necessary for the hearing of the motion. R.R.O. 1990, Reg. 194, r. 37.10 (2).

Responding Party's Motion Record

(3) Where a motion record is served a responding party who is of the opinion that it is incomplete may serve on every other party, and file, with proof of service, in the court office where the motion is to be heard, at least four days before the hearing, a responding party's motion record containing, in consecutively numbered pages arranged in the following order,

(a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter; and

(b) a copy of any material to be used by the responding party on the motion and not included in the motion record. R.R.O. 1990, Reg. 194, r. 37.10 (3); O. Reg. 171/98, s. 14 (2); O. Reg. 438/08, s. 35 (2).

Material may be Filed as Part of Record

(4) A notice of motion and any other material served by a party for use on a motion may be filed, together with proof of service, as part of the party's motion record and need not be filed separately. R.R.O. 1990, Reg. 194, r. 37.10 (4).

Transcript of Evidence

(5) A party who intends to refer to a transcript of evidence at the hearing of a motion shall file a copy of the transcript as provided by rule 34.18. R.R.O. 1990, Reg. 194, r. 37.10 (5).

Factum

(6) A party may serve on every other party a factum that meets the requirements of rule 4.06.1. O. Reg. 14/04, s. 18; O. Reg. 300/24, s. 8.

(7) The moving party's factum, if any, shall be served and filed with proof of service in the court office where the motion is to be heard at least seven days before the hearing. O. Reg. 394/09, s. 15 (1).

(8) The responding party's factum, if any, shall be served and filed with proof of service in the court office where the motion is to be heard at least four days before the hearing. O. Reg. 394/09, s. 15 (2).

(9) Revoked: O. Reg. 394/09, s. 15 (3).

Refusals and Undertakings Chart

(10) On a motion to compel answers or to have undertakings given on an examination or cross-examination satisfied,

(a) the moving party shall serve on every other party to the motion and file with proof of service, in the court office where the motion is to be heard, at least seven days before the hearing, a refusals and undertakings chart (Form 37C) that sets out,

(i) the issue that is the subject of the refusal or undertaking and its connection to the pleadings or affidavit,

(ii) the question number and a reference to the page of the transcript where the question appears, and

(iii) the exact words of the question; and

(b) the responding party shall serve on the moving party and every other party to the motion and file with proof of service, in the court office where the motion is to be heard, at least four days before the hearing, a copy of the undertakings and refusals chart that was served by the moving party completed so as to show,

(i) the answer provided, or

(ii) the basis for the refusal to answer the question or satisfy the undertaking. O. Reg. 132/04, s. 8; O. Reg. 438/08, s. 35 (5, 6).

Confirmation of Motion

37.10.1 (1) A party who makes a motion on notice to another party shall confer or attempt to confer with the other party and shall, not later than 2 p.m. five days before the hearing date,

(a) give the registrar a confirmation of motion (Form 37B) by,

(i) sending it by e-mail to the court office, or

(ii) leaving it at the court office; and

(b) send a copy of the confirmation of motion to the other party by e-mail. O. Reg. 537/18, s. 7 (1); O. Reg. 689/20, s. 23 (1); O. Reg. 383/21, s. 4; O. Reg. 224/22, s. 2 (1, 3).

Failure to Send Copy of Confirmation

(2) If a party fails to send a copy of the confirmation of motion to a responding party in accordance with clause (1) (b), the responding party may, not later than 10 a.m. four days before the hearing date,

- (a) give the registrar a confirmation of motion (Form 37B) by,
 - (i) sending it by e-mail to the court office, or
 - (ii) leaving it at the court office; and

(b) send a copy of the confirmation of motion to the moving party by e-mail. O. Reg. 537/18, s. 7 (1); O. Reg. 689/20, s. 23 (2); O. Reg. 383/21, s. 4; O. Reg. 224/22, s. 2 (2, 3).

Duty to Update

(3) A party who has given a confirmation of motion and later determines that the confirmation is no longer correct shall immediately,

- (a) give the registrar a corrected confirmation of motion (Form 37B) by,
 - (i) sending it by e-mail to the court office, or
 - (ii) leaving it at the court office; and

(b) send a copy of the corrected confirmation of motion to the other party by e-mail. O. Reg. 14/04, s. 19; O. Reg. 689/20, s. 23 (3); O. Reg. 383/21, s. 4; O. Reg. 224/22, s. 2 (3).

Effect of Failure to Confirm

(4) If no confirmation is given under subrule (1), the motion shall not be heard and is deemed to have been abandoned, unless the court orders otherwise. O. Reg. 537/18, s. 7 (2).

Costs

(5) If a motion is deemed to have been abandoned under subrule (4) and the responding party gave a confirmation of motion in accordance with subrule (2), the responding party may be heard on the costs of the abandoned motion on the hearing date scheduled for the abandoned motion. O. Reg. 537/18, s. 7 (2).

Hearing in Absence of Public

37.11 (1) A motion may be heard in the absence of the public where,

- (a) the motion is to be heard and determined without oral argument;
- (b) because of urgency, it is impractical to have the motion heard in public;
- (c) the motion is to be heard by telephone conference or video conference;
- (d) the motion is made in the course of a pre-trial conference or case conference;

or

(e) the motion is before a single judge of an appellate court. R.R.O. 1990, Reg. 194, r. 37.11 (1); O. Reg. 465/93, s. 4 (1); O. Reg. 24/00, s. 7; O. Reg. 170/14, s. 9.

(2) The hearing of all other motions shall be open to the public, except as provided in section 135 of the *Courts of Justice Act*, in which case the presiding judge, associate judge or officer shall endorse,

(a) on the notice of motion leave for a hearing in the absence of the public; or

(b) on a separate document in accordance with subrule 59.02 (2), with necessary modifications. O. Reg. 689/20, s. 24; O. Reg. 383/21, s. 15.

37.12 Revoked: O. Reg. 288/99, s. 15.

Hearing without Oral Argument

Consent motions, unopposed motions and motions without notice

37.12.1 (1) Where a motion is on consent, unopposed or without notice under subrule 37.07 (2), the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise. O. Reg. 465/93, s. 4 (2).

(2) Where the motion is on consent, the consent and a draft order shall be filed with the notice of motion. O. Reg. 766/93, s. 1 (1).

(2.1) In the case of a motion on consent in the Court of Appeal, an affidavit or other document setting out the reasons why it is appropriate to make the order sought on the motion shall also be filed with the notice of motion. O. Reg. 82/17, s. 3.

(3) Where the motion is unopposed, a notice from the responding party stating that the party does not oppose the motion and a draft order shall be filed with the notice of motion. O. Reg. 766/93, s. 1 (1).

Opposed Motions in Writing

(4) The moving party may propose in the notice of motion that the motion be heard in writing without the attendance of the parties, in which case,

(a) the motion shall be made on at least fourteen days notice;

(b) the moving party shall serve with the notice of motion and immediately file, with proof of service in the court office where the motion is to be heard, a motion record, a draft order and a factum entitled factum for a motion in writing, setting out the moving party's argument;

(c) the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise. O. Reg. 465/93, s. 4 (2); O. Reg. 766/93, s. 1 (2); O. Reg. 689/20, s. 25.

(5) Within ten days after being served with the moving party's material, the responding party shall serve and file, with proof of service, in the court office where the motion is to be heard,

(a) a consent to the motion;

(b) a notice that the responding party does not oppose the motion;

(c) a motion record, a notice that the responding party agrees to have the motion heard and determined in writing under this rule and a factum entitled factum for a motion in writing, setting out the party's argument; or

(d) a notice that the responding party intends to make oral argument, along with any material intended to be relied upon by the party. O. Reg. 465/93, s. 4 (2).

(6) Where the responding party delivers a notice under subrule (5) that the party intends to make oral argument, the moving party may either attend the hearing and make oral argument or not attend and rely on the party's motion record and factum. O. Reg. 465/93, s. 4 (2).

Disposition of Motion

37.13 (1) On the hearing of a motion, the presiding judge or officer may grant the relief sought or dismiss or adjourn the motion, in whole or in part and with or without terms, and may,

(a) where the proceeding is an action, order that it be placed forthwith, or within a specified time, on a list of cases requiring speedy trial; or

(b) where the proceeding is an application, order that it be heard at such time and place as are just. R.R.O. 1990, Reg. 194, r. 37.13 (1).

(2) A judge who hears a motion may,

(a) in proper case, order that the motion be converted into a motion for judgment; or

(b) order the trial of an issue, with such directions as are just, and adjourn the motion to be disposed of by the trial judge. R.R.O. 1990, Reg. 194, r. 37.13 (2).

(3) Where on a motion a judge directs the trial of an issue, subrules 38.10 (2) and (3) (issue treated as action) apply with necessary modifications. R.R.O. 1990, Reg. 194, r. 37.13 (3).

Exception, motions in estate matters

(4) Clause (2) (b) and subrule (3) do not apply to a motion under Rule 74, 74.1 or 75. O. Reg. 484/94, s. 7; O. Reg. 111/21, s. 4.

Setting Aside, Varying or Amending Orders

Motion to Set Aside or Vary

37.14 (1) A party or other person who,

(a) is affected by an order obtained on motion without notice;

(b) fails to appear on a motion through accident, mistake or insufficient notice;

or

(c) is affected by an order of a registrar,

may move to set aside or vary the order, by a notice of motion that is served forthwith after the order comes to the person's attention and names the first available hearing date that is at least three days after service of the notice of motion. R.R.O. 1990, Reg. 194, r. 37.14 (1); O. Reg. 132/04, s. 9.

(2) On a motion under subrule (1), the court may set aside or vary the order on such terms as are just. R.R.O. 1990, Reg. 194, r. 37.14 (2).

Order Made by Registrar

(3) A motion under subrule (1) or any other rule to set aside, vary or amend an order of a registrar may be made to a judge or associate judge, at a place determined in accordance with rule 37.03 (where motions to be brought). R.R.O. 1990, Reg. 194, r. 37.14 (3); O. Reg. 689/20, s. 26; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15

Order Made by Judge

(4) A motion under subrule (1) or any other rule to set aside, vary or amend an order of a judge may be made,

(a) to the judge who made it, at any place; or

(b) to any other judge, at a place determined in accordance with rule 37.03 (where motions to be brought). R.R.O. 1990, Reg. 194, r. 37.14 (4); O. Reg. 689/20, s. 26.

Order Made by Associate Judge

(5) A motion under subrule (1) or any other rule to set aside, vary or amend an order of an associate judge may be made,

(a) to the associate judge who made it, at any place; or

(b) to any other associate judge or to a judge, at a place determined in accordance with rule 37.03 (where motions to be brought). R.R.O. 1990, Reg. 194, r. 37.14 (5); O. Reg. 689/20, s. 26; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Order Made in Court of Appeal or Divisional Court

(6) A motion under subrule (1) or any other rule to set aside, vary or amend an order made by a judge or panel of the Court of Appeal or Divisional Court may be made,

(a) where the order was made by a judge, to the judge who made it or any other judge of the court; or

(b) where the order was made by a panel of the court, to the panel that made it or any other panel of the court. R.R.O. 1990, Reg. 194, r. 37.14 (6); O. Reg. 82/17, s. 4, 17.

Motions in a Complicated Proceeding or Series of Proceedings

37.15 (1) Where a proceeding involves complicated issues or where there are two or more proceedings that involve similar issues, the Chief Justice or Associate Chief Justice of the Superior Court of Justice, a regional senior judge of the Superior Court of Justice or a judge designated by any of them may direct that all motions in the proceeding or proceedings be heard by a particular judge, and rule 37.03 (where motions to be brought) does not apply to those motions. R.R.O. 1990, Reg. 194, r. 37.15 (1); O. Reg. 292/99, ss. 2 (3), 4; O. Reg. 689/20, s. 27.

(1.1) A judge who is directed to hear all motions under subrule (1) may refer to an associate judge any motion within the jurisdiction of an associate judge under subrule 37.02 (2) unless the judge who made the direction under subrule (1) directs otherwise. O. Reg. 348/97, s. 2; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

(1.2) A judge who is directed to hear all motions under subrule (1) and an associate judge to whom a motion is referred under subrule (1.1) may give such directions and make such procedural orders as are necessary to promote the most expeditious and least expensive determination of the proceeding. O. Reg. 438/08, s. 37 (1); O. Reg. 394/09, s. 16; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

(2) A judge who hears motions pursuant to a direction under subrule (1) shall not preside at the trial of the actions or the hearing of the applications except with the written consent of all parties. R.R.O. 1990, Reg. 194, r. 37.15 (2); O. Reg. 438/08, s. 37 (2).

Prohibiting Motions without Leave

37.16 On motion by any party, a judge or associate judge may by order prohibit another party from making further motions in the proceeding without leave, where the judge or associate judge on the hearing of the motion is satisfied that the other party is attempting to delay or add to the costs of the proceeding or otherwise abuse the process of the court by a multiplicity of frivolous or vexatious motions. R.R.O. 1990, Reg. 194, r. 37.16; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Motion before Commencement of Proceeding

37.17 In an urgent case, a motion may be made before the commencement of a proceeding on the moving party's undertaking to commence the proceeding forthwith. R.R.O. 1990, Reg. 194, r. 37.17.

Specific Claims Tribunal Act, S.C. 2008, c. 22

Exceptions

15 (1) A First Nation may not file with the Tribunal a claim that

(a) is based on events that occurred within the 15 years immediately preceding the date on which the claim was filed with the Minister;

(b) is based on a land claims agreement entered into after December 31, 1973, or any related agreement or Act of Parliament;

Filing a specific claim

16 (1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;

(b) three years have elapsed after the day on which the claim was filed with the Minister and the Minister has not notified the First Nation in writing of his or her decision on whether to negotiate the claim;

(c) in the course of negotiating the claim, the Minister consents in writing to the filing of the claim with the Tribunal; or

(d) three years have elapsed after the day on which the Minister has notified the First Nation in writing of the Minister's decision to negotiate the claim, in whole or in part, and the claim has not been resolved by a final settlement agreement.

Basis and limitations for decision on compensation

20 (1) The Tribunal, in making a decision on the issue of compensation for a specific claim,

(a) shall award monetary compensation only;

(b) shall not, despite any other provision in this subsection, award total compensation in excess of \$150 million;

Treaty No. 3

Treaty 3 between Her Majesty the Queen and the Saulteaux Tribe of Ojibbeway Indians and the Northwest Angle on the Lake of the Woods with Adhesions.

ARTICLES OF A TREATY made and concluded this third day of October, in the year of Our Lord one thousand eight hundred and seventy-three, between Her Most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners, the Honourable Alexander Morris, Lieutenant-Governor of the Province of Manitoba and the North-west Territories; Joseph Alfred Norbert Provencher and Simon James Dawson, of the one part, and the Saulteaux Tribe of the Ojibway Indians, inhabitants of the country within the limits hereinafter defined and described, by their Chiefs chosen and named as hereinafter mentioned, of the other part.

Whereas the Indians inhabiting the said country have, pursuant to an appointment made by the said Commissioners, been convened at a meeting at the north-west angle of the Lake of the Woods to deliberate upon certain matters of interest to Her Most Gracious Majesty, of the one part, and the said Indians of the other.

And whereas the said Indians have been notified and informed by Her Majesty's said Commissioners that it is the desire of Her Majesty to open up for settlement, immigration and such other purpose as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty and arrange with them so that there may be peace and good will between them and Her Majesty and that they may know and be assured of what allowance they are to count upon and receive from Her Majesty's bounty and benevolence.

And whereas the Indians of the said tract, duly convened in council as aforesaid, and being requested by Her Majesty's said Commissioners to name certain Chiefs and Headmen, who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon, and to become responsible to Her Majesty for their faithful performance by their respective bands of such obligations as shall be assumed by them, the said Indians have thereupon named the following persons for that purpose, that is to say:-

KEK-TA-PAY-PI-NAIS (Rainy River.)
KITCHI-GAY-KAKE (Rainy River.)
NOTE-NA-QUA-HUNG (North-West Angle.)
NAWE-DO-PE-NESS (Rainy River.)
POW-WA-SANG (North-West Angle.)
CANDA-COM-IGO-WE-NINIE (North-West Angle.)
PAPA-SKO-GIN (Rainy River.)
MAY-NO-WAH-TAW-WAYS-KIONG (North-West Angle.)
KITCHI-NE-KA-LE-HAN (Rainy River.)
SAH-KATCH-EWAY (Lake Seul.)
MUPA-DAY-WAH-SIN (Kettle Falls.)
ME-PIE-SIES (Rainy Lake, Fort Frances.)
OOS-CON-NA-GEITH (Rainy Lake.)

WAH-SHIS-KOUCÉ (Eagle Lake.)
KAH-KEE-Y-ASH (Flower Lake.)
GO-BAY (Rainy Lake.)
KA-MO-TI-ASH (White Fish Lake.)
NEE-SHO-TAL (Rainy River.)
KEE-JE-GO-KAY (Rainy River.)
SHA-SHA-GANCE (Shoal Lake.)
SHAH-WIN-NA-BI-NAIS (Shoal Lake.)
AY-ASH-A-WATH (Buffalo Point.)
PAY-AH-BEE-WASH (White Fish Bay.)
KAH-TAY-TAY-PA-E-CUTCH (Lake of the Woods.)

And thereupon, in open council, the different bands having presented their Chiefs to the said Commissioners as the Chiefs and Headmen for the purposes aforesaid of the respective bands of Indians inhabiting the said district hereinafter described:

And whereas the said Commissioners then and there received and acknowledged the persons so presented as Chiefs and Headmen for the purpose aforesaid of the respective bands of Indians inhabiting the said district hereinafter described;

And whereas the said Commissioners have proceeded to negotiate a treaty with the said Indians, and the same has been finally agreed upon and concluded, as follows, that is to say:-

The Saulteaux Tribe of the Ojibbeway Indians and all other the Indians inhabiting the district hereinafter described and defined, do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada for Her Majesty the Queen and Her successors forever, all their rights, titles and privileges whatsoever, to the lands included within the following limits, that is to say:-

Commencing at a point on the Pigeon River route where the international boundary line between the Territories of Great Britain and the United States intersects the height of land separating the waters running to Lake Superior from those flowing to Lake Winnipeg; thence northerly, westerly and easterly along the height of land aforesaid, following its sinuosities, whatever their course may be, to the point at which the said height of land meets the summit of the watershed from which the streams flow to Lake Nepigon; thence northerly and westerly, or whatever may be its course, along the ridge separating the waters of the Nepigon and the Winnipeg to the height of land dividing the waters of the Albany and the Winnipeg; thence westerly and north-westerly along the height of land dividing the waters flowing to Hudson's Bay by the Albany or other rivers from those running to English River and the Winnipeg to a point on the said height of land bearing north forty-five degrees east from Fort Alexander, at the mouth of the Winnipeg; thence south forty-five degrees west to Fort Alexander, at the mouth of the Winnipeg; thence southerly along the eastern bank of the Winnipeg to the mouth of White Mouth River; thence southerly by the line described as in that part forming the eastern boundary of the tract surrendered by the Chippewa and Swampy Cree tribes of Indians to Her Majesty on the third of August, one thousand eight hundred and seventy-one, namely, by White

Mouth River to White Mouth Lake, and thence on a line having the general bearing of White Mouth River to the forty-ninth parallel of north latitude; thence by the forty-ninth parallel of north latitude to the Lake of the Woods, and from thence by the international boundary line to the place beginning.

The tract comprised within the lines above described, embracing an area of fifty-five thousand square miles, be the same more or less. To have and to hold the same to Her Majesty the Queen, and Her successors forever.

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands, due respect being had to lands at present cultivated by the said Indians, and also to lay aside and reserve for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada, in such a manner as shall seem best, other reserves of land in the said territory hereby ceded, which said reserves shall be selected and set aside where it shall be deemed most convenient and advantageous for each band or bands of Indians, by the officers of the said Government appointed for that purpose, and such selection shall be so made after conference with the Indians; provided, however, that such reserves, whether for farming or other purposes, shall in no wise exceed in all one square mile for each family of five, or in that proportion for larger or smaller families; and such selections shall be made if possible during the course of next summer, or as soon thereafter as may be found practicable, it being understood, however, that if at the time of any such selection of any reserve, as aforesaid, there are any settlers within the bounds of the lands reserved by any band, Her Majesty reserves the right to deal with such settlers as She shall deem just so as not to diminish the extent of land allotted to Indians; and provided also that the aforesaid reserves of lands, or any interest or right therein or appurtenant thereto, may be sold, leased or otherwise disposed of by the said Government for the use and benefit of the said Indians, with the consent of the Indians entitled thereto first had and obtained.

And with a view to show the satisfaction of Her Majesty with the behaviour and good conduct of Her Indians She hereby, through Her Commissioners, makes them a present of twelve dollars for each man, woman and child belonging to the bands here represented, in extinguishment of all claims heretofore preferred.

And further, Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to Her Government of Her Dominion of Canada may seem advisable whenever the Indians of the reserve shall desire it.

Her Majesty further agrees with Her said Indians that within the boundary of Indian reserves, until otherwise determined by Her Government of the Dominion of Canada, no intoxicating liquor shall be allowed to be introduced or sold, and all laws now in force or hereafter to be enacted to preserve Her Indian subjects inhabiting the reserves or living elsewhere within Her North-west Territories, from the evil influences of the use of intoxicating liquors, shall be strictly enforced.

Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract

surrendered as hereinbefore described, subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may, from time to time, be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government.

It is further agreed between Her Majesty and Her said Indians that such sections of the reserves above indicated as may at any time be required for Public Works or buildings of what nature soever may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made for the value of any improvements thereon.

And further, that Her Majesty's Commissioners shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families, and shall in every year ensuing the date hereof, at some period in each year to be duly notified to the Indians, and at a place or places to be appointed for that purpose within the territory ceded, pay to each Indian person the sum of five dollars per head yearly.

It is further agreed between Her Majesty and the said Indians that the sum of fifteen hundred dollars per annum shall be yearly and every year expended by Her Majesty in the purchase of ammunition and twine for nets for the use of the said Indians.

It is further agreed between Her Majesty and the said Indians that the following articles shall be supplied to any band of the said Indians who are now actually cultivating the soil or who shall hereafter commence to cultivate the land, that is to say: two hoes for every family actually cultivating, also one spade per family as aforesaid, one plough for every ten families as aforesaid, five harrows for every twenty families as aforesaid, one scythe for every family as aforesaid, and also one axe and one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grindstone, one auger for each band, and also for each Chief for the use of his band one chest of ordinary carpenter's tools; also for each band enough of wheat, barley, potatoes and oats to plant the land actually broken up for cultivation by such band; also for each band one yoke of oxen, one bull and four cows; all the aforesaid articles to be given once for all for the encouragement of the practice of agriculture among the Indians.

It is further agreed between Her Majesty and the said Indians that each Chief duly recognized as such shall receive an annual salary of twenty-five dollars per annum, and each subordinate officer, not exceeding three for each band, shall receive fifteen dollars per annum; and each such Chief and subordinate officer as aforesaid shall also receive once in every three years a suitable suit of clothing; and each Chief shall receive, in recognition of the closing of the treaty, a suitable flag and medal.

And the undersigned Chiefs, on their own behalf and on behalf of all other Indians inhabiting the tract within ceded, do hereby solemnly promise and engage to strictly observe this treaty, and also to conduct and behave themselves as good and loyal

subjects of Her Majesty the Queen. They promise and engage that they will in all respects obey and abide by the law, that they will maintain peace and good order between each other, and also between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians or whites, now inhabiting or hereafter to inhabit any part of the said ceded tract, and that they will not molest the person or property of any inhabitants of such ceded tract, or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tract, or any part thereof; and that they will aid and assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this treaty, or infringing the laws in force in the country so ceded.

IN WITNESS WHEREOF, Her Majesty's said Commissioners and the said Indian Chiefs have hereunto subscribed and set their hands at the North-West Angle of the Lake of the Woods this day and year herein first above named.

*Signed by the Chiefs within
named, in presence of the
following witnesses, the
same having been first
read and explained by the
Honorable James McKay:*

JAMES McKAY,
MOLYNEUX St. JOHN,
ROBERT PITHER,
CHRISTINE V. K.
MORRIS,
CHARLES NOLIN,
A. McDONALD, Capt.,
Comg. Escort to Lieut.
Governor.
JAS. F. GRAHAM,
JOSEPH NOLIN,
A. McLEOD,
GEORGE McPHERSON,
Sr.,
SEDLEY BLANCHARD,
W. FRED. BUCHANAN,
FRANK G. BECHER,
ALFRED CODD, M.D.,
G. S. CORBAULT,
PIERRE LEVIELLER,
NICHOLAS
CHATELAINE.

ALEX. MORRIS L.G.,
J. A. N. PROVENCHER, Ind.
Comr.,
S. J. DAWSON,

KEE-TA-KAY-PI-NAIS,
his x mark
KITCHI-GAY-KAKE,
his x mark
NO-TE-NA-QUA-HUNG,
his x mark
MAWE-DO-PE-NAIS,
his x mark
POW-WA-SANG,
his x mark
CANDA-COM-IGO-WI-NINE,
his x mark
MAY-NO-WAH-TAW-WAYS-
KUNG,
his x mark
KITCHI-NE-KA-BE-HAN,
his x mark
SAH-KATCH-EWAY,
his x mark
MUKA-DAY-WAH-SIN,
his x mark
ME-KIE-SIES,
OOS-CON-NA-GEISH,
his x mark
WAH-SHIS-KOUCÉ,
his x mark

KAH-KEE-Y-ASH,
his x mark
GO-BAY,
his x mark
KA-ME-TI-ASH,
his x mark
NEE-SHO-TAL,
his x mark
KEE-JEE-GO-KAY,
his x mark
SHA-SHA-GAUCE,
his x mark
SHAW-WIN-NA-BI-NAIS,
his x mark
AY-ASH-A-WASH,
his x mark
PAY-AH-BEE-WASH,
his x mark
KAH-TAY-TAY-PA-O-CUTCH,
his x mark

Indian Subscription to Treaty No 3

We, having had communication of the treaty, a certified copy whereof is hereto annexed, but not having been present at the councils held at the North West Angle of the Lake of the Woods between Her Majesty's Commissioners, and the several Indian Chiefs and others therein named, at which the articles of the said treaty were agreed upon, hereby for ourselves and the several bands of Indians which we represent, in consideration of the provisions of the said treaty being extended to us and the said bands which we represent, transfer, surrender and relinquish to Her Majesty the Queen, Her heirs and successors, to and for the use of Her Government of Her Dominion of Canada, all our right, title and privilege whatsoever, which we, the said Chiefs and the said bands which we represent have, hold or enjoy, of, in and to the territory described and fully set out in the said articles of treaty, and every part thereof. To have and to hold the same unto and to the use of Her said Majesty the Queen, Her heirs and successors forever.

And we hereby agree to accept the several provisions, payments and reserves of the said treaty, as therein stated, and solemnly promise and engage to abide by, carry out and fulfil all the stipulations, obligations and conditions therein contained, on the part of the said Chiefs and Indians therein named, to be observed and performed; and in all things to conform to the articles of the said treaty as if we ourselves and the bands which we represent had been originally contracting parties thereto, and had been present and attached our signatures to the said treaty.

IN WITNESS WHEREOF, Her Majesty's said Commissioners and the said Indian Chiefs have hereunto subscribed and set their hands, this thirteenth day of October, in the year of Our Lord one thousand eight hundred and seventy-three.

Signed by S. J. Dawson,
Esquire, one of Her
Majesty's said
Commissioners, for and on
behalf and with the
authority and consent of
the Honorable Alexander
Morris, Lieutenant
Governor of Manitoba and
the North-West Territories,
and J. A. N. Provencher,
Esq., the remaining two
Commissioners, and
himself and by the Chiefs
within named, on behalf of
themselves and the several
bands which they
represent, the same and the
annexed certified copy of
articles of treaty having
been first read and
explained in presence of
the following witnesses:

THOS. A. P. TOWERS,
JOHN AITKEN,
A. J. McDONALD.
UNZZAKI.
JAS. LOGANOSH,
his x mark
PINLLSISE.

For and on behalf of the
Commissioners, the Honorable
Alexander Morris, Lieut. Governor
of Manitoba and the North-west
Territories, Joseph Albert Norbert
Provencher, Esquire, and the
undersigned
S. J. DAWSON,
Commissioner.
PAY-BA-MA-CHAS,
his x mark
RE-BA-QUIN,
his x mark
ME-TAS-SO-QUE-NE-SKANK,
his x mark

To: S. J. Dawson, Esquire, Indian Commissioner

SIR,-We hereby authorize you to treat with the various bands belonging to the Salteaux Tribe of the Ojibbeway Indians inhabiting the North-West Territories of the Dominion of Canada not included in the foregoing certified copy of articles of treaty, upon the same conditions and stipulations as are therein agreed upon, and to sign and execute for us and in our name and on our behalf the foregoing agreement annexed to the foregoing treaty.

NORTH-WEST ANGLE, LAKE OF THE WOODS,
October 4th, A.D. 1873.

ALEX. MORRIS,
Lieutenant-Governor.
J. A. N. PROVENCHER,
Indian Commissioner.

Adhesion by Half breeds of Rainy River and Lake (A.)

This Memorandum of Agreement made and entered into this twelfth day of September one thousand eight hundred and seventy-five, between Nicholas Chatelaine, Indian interpreter at Fort Francis and the Rainy River and acting herein solely in the latter capacity for and as representing the said Half-breeds, on the one part, and John Stoughton Dennis, Surveyor General of Dominion Lands, as representing Her Majesty the Queen through the Government of the Dominion, of the other part, Witnesseth as follows:-

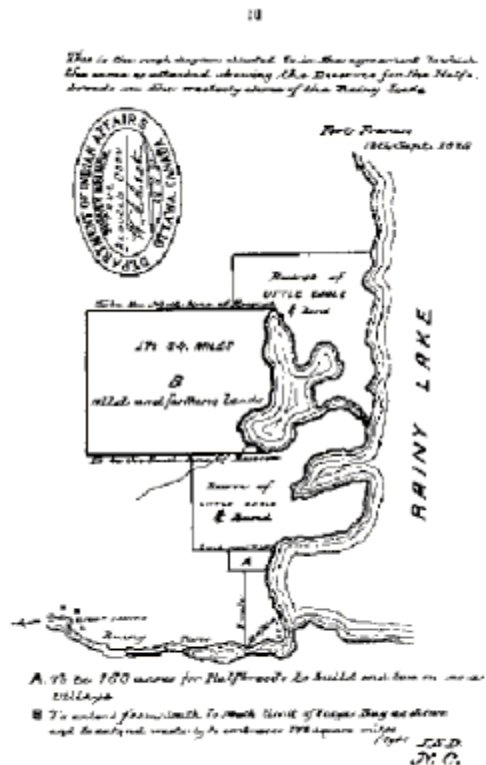
Whereas the Half-breeds above described, by virtue of their Indian blood, claim a certain interest or title in the lands or territories in the vicinity of Rainy Lake and the Rainy River, for the commutation or surrender of which claims they ask compensation from the Government.

And whereas, having fully and deliberately discussed and considered the matter, the said Half-breeds have elected to join in the treaty made between the Indians and Her Majesty, at the North-West Angle of the Lake of the Woods, on the third day of October, 1873, and have expressed a desire thereto, and to become subject to the terms and conditions thereof in all respects saving as hereinafter set forth.

It is now hereby agreed upon by and between the said parties hereto (this agreement, however, to be subject in all respects to approval and confirmation by the Government, without which the same shall be considered as void and of no effect), as follows, that is to say: The Half-breeds, through Nicholas Chatelaine, their Chief above named, as representing them herein, agree as follows, that is to say:-

That they hereby fully and voluntarily surrender to Her Majesty the Queen to be held by Her Majesty and Her successors for ever, any and all claim, right, title or interest which they, by virtue of their Indian blood, have or possess in the lands or territories above described, and solemnly promise to observe all the terms and conditions of the said treaty (a copy whereof, duly certified by the Honourable the Secretary of State of the Dominion has been this day placed in the hands of the said Nicholas Chatelaine).

In consideration of which Her Majesty agrees as follows, that is to say:-



That the said Half-breeds, keeping and observing on their part the terms and conditions of the said treaty shall receive compensation in the way of reserves of land, payments, annuities and presents, in manner similar to that set forth in the several respects for the Indians in the said treaty; it being understood, however, that any sum expended annually by Her Majesty in the purchase of ammunition and twine for nets for the use of the said Half-breeds shall not be taken out of the fifteen hundred dollars set apart by the treaty for the purchase annually of those articles for the Indians, but shall be in addition thereto, and shall be a pro rata amount in the proportion of the number of Half-breeds parties hereto to the number of Indians embraced in the treaty; and it being further understood that the said Half-breeds shall be entitled to all the benefits of the said treaty as from the date thereof, as regards payments and annuities, in the same manner as if they had been present and had become parties to the same at the time of the making thereof.

And whereas the said Half-breeds desire the land set forth as tracts marked (A) and (B) on the rough diagram attached hereto, and marked with the initials of the parties aforementioned to this agreement, as their reserves (in all eighteen square miles), to which they would be entitled under the provisions of the treaty, the same is hereby agreed to on the part of the Government.

Should this agreement be approved by the Government, the reserves as above to be surveyed in due course.

Signed at Fort Francis, the day and date above
mentioned, in presence of us as witnesses: A.
R. TILLIE,
CHAS. S. CROWE,
W. B. RICHARDSON,
L. KITTSON.

J. S. DENNIS, [L.S.]
NICHOLAS
CHATELAINE. [L.S.]
his x mark

Adhesion of Lac Seul Indians to Treaty No. 3

LAC SEUL, 9th June, 1874.

We, the Chiefs and Councillors of Lac Seul, Seul, Trout and Sturgeon Lakes,
subscribe and set our marks, that we and our followers will abide by the articles of the
Treaty made and concluded with the Indians at the North West Angle of the Lake of
the Woods, on the third day of October, in the year of Our Lord one thousand eight
hundred and seventy-three, between Her Most Gracious Majesty the Queen of Great
Britain and Ireland, by Her Commissioners, Hon. Alexander Morris, Lieutenant
Governor of Manitoba and the North-West Territories, Joseph Albert N. Provencher,
and Simon J. Dawson, of the one part, and the Saulteaux tribes of Ojibewas Indians,
inhabitants of the country as defined by the Treaty aforesaid.

IN WITNESS WHEREOF, Her Majesty's Indian Agent and the Chiefs and
Councillors have hereto set their hands at Lac Seul, on the 9th day of June, 1874.

(Signed) ACKEMENCE, Councillors.
his x mark
MAINEETAINEQUIRE,
his x mark
NAH-KEE-JECKWAHE,
his x mark

The whole Treaty explained by R. J. N. PITHER.

Witnesses:
(Signed) JAMES McKENZIE.
LOUIS KITTSON.
NICHOLAS CHATELAINE.
his x mark

**WABASEEMOONG
INDEPENDENT NATIONS**

ATTORNEY GENERAL OF CANADA

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding Commenced at Kenora, Ontario

FACTUM OF THE PLAINTIFF
(Motion for Certification)

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